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18 Attorneys for Defendant and Counterclaimant  
19 SENORX, INC.

20  
21 IN THE UNITED STATES DISTRICT COURT  
22  
23 NORTHERN DISTRICT OF CALIFORNIA  
24  
25 SAN JOSE DIVISION

26 HOLOGIC, INC., CYTYC CORPORATION and )  
27 HOLOGIC L.P., )  
28  
29 Plaintiffs, )  
30  
31 v. )  
32  
33 SENORX, INC., )  
34  
35 Defendant. )

Case No. 08-CV-0133 RMW

**DECLARATION OF ROY  
WEINSTEIN IN SUPPORT OF  
DEFENDANT SENORX, INC.'S  
OPPOSITION TO PLAINTIFFS'  
MOTION FOR A PRELIMINARY  
INJUNCTION**

REDACTED VERSION

36 SENORX, INC., )  
37  
38 Counterclaimant, )  
39  
40 v. )  
41  
42 HOLOGIC, INC., CYTYC CORPORATION and )  
43 HOLOGIC L.P., )  
44  
45 Counterdefendants. )

Date: April 21, 2008  
Time: 2:00 p.m.  
Courtroom: 6, 4th Floor  
Judge: Hon. Ronald M. Whyte

1 **I. INTRODUCTION**

2 1. I am an economist and President of Micronomics, Inc., an economic research and  
3 consulting firm located in Los Angeles, California. I have more than 38 years of consulting  
4 experience analyzing questions relating to industrial organization, competitive impact, patent  
5 damages, the valuation of intellectual property, antitrust economics, and the collection, tabulation  
6 and analysis of various types of economic and statistical data. I have spoken on these subjects  
7 before the National Association of Attorneys General, the American Bar Association, the Steering  
8 Committee of the California Society of Certified Public Accountants, the Los Angeles County Bar  
9 Association, the UCLA Institute on Mergers and Acquisitions, and the Midwest Economics  
10 Association. My articles have appeared in the *Journal of the Patent and Trademark Office*  
11 *Society*, *The Journal of Law and Technology*, *The Licensing Journal*, *The Antitrust Bulletin*, *The*  
12 *International Journal of the Economics of Business*, the *California State Bar Journal*, and  
13 *Competition*, the Journal of the Antitrust and Trade Regulation Law Section of the State Bar of  
14 California.

15 2. I have extensive experience pertaining to the valuation of intellectual property in  
16 the context of patent infringement litigation and have been asked to calculate damages adequate to  
17 compensate for patent infringement on at least 35 separate occasions. I also have extensive  
18 experience involving medical devices, the prescription drug industry, and managed care. Detailed  
19 biographical information, including a list of the matters in which I have given testimony, either by  
20 deposition or at trial, is attached at Exhibit 1. My billing rate is \$650 per hour. I also have been  
21 assisted by members of my staff.

22 **II. ASSIGNMENT**

23 3. I have been asked by counsel for SenoRx, Inc. (“SenoRx”) to consider whether  
24 Hologic, Inc., Cytac Corporation (“Cytac”), and Hologic L.P. (collectively “Hologic”) would  
25 suffer “irreparable harm” if SenoRx is allowed to continue to market its Contura Multi-Lumen  
26 Balloon (“Contura”) product through the end of trial.<sup>1</sup> In that regard, I understand that  
27

28 <sup>1</sup> Cytac Corporation and Hologic L.P. are subsidiaries of Hologic, Inc. Hologic, Inc. Form 10-K for the fiscal year ended September 29, 2007, Exhibit 21.01, Subsidiaries of Hologic.

1 “irreparable” harm is injury that cannot be quantified as monetary damages or for which the  
2 injured party cannot be made whole by the party causing the damage.

3 4. In performing my analysis, I have reviewed pleadings, including Plaintiffs’ Notice  
4 of Motion and Motion for Preliminary Injunction (“Motion”), the Declaration of Glenn Magnuson  
5 in Support of Plaintiffs’ Motion for Preliminary Injunction (“Magnuson Declaration”), deposition  
6 testimony, and the patents asserted by Hologic. In addition, I have reviewed publicly available  
7 trade press and studies concerning accelerated partial breast irradiation (“APBI”) and  
8 brachytherapy treatments. I also have reviewed financial statements of SenoRx and Hologic as  
9 well as SenoRx presentations and records. In arriving at my opinions, I have relied on my training  
10 as an economist, my knowledge and experience regarding the medical device and prescription  
11 pharmaceutical industries, and the economics of entry and competition. A summary of the  
12 materials considered in connection with my assignment is attached at Exhibit 2.

13 5. I will supplement this declaration should that be necessary in order to consider  
14 additional information that might become available, including documents, court filings and  
15 witness testimony.

### 16 **III. SUMMARY AND CONCLUSIONS**

17 6. I have concluded that neither the entry nor the continued sales of Contura by  
18 SenoRx would inflict irreparable harm on Hologic. First, the economic impact caused by such  
19 sales would be readily calculable and remediable through an award of money damages at the end  
20 of trial. Second, [REDACTED]

21 [REDACTED] Third, Hologic already licensed a competing APBI treatment system [REDACTED]  
22 [REDACTED] and invested in another  
23 competitor, Cianna Medical, Inc. (“Cianna Medical”). Finally, continued sales of Contura will not  
24 otherwise inflict irreparable harm to Hologic as a result of loss of reputation, damage to the APBI  
25 market, irrecoverable investments in research and development, or competitive entry.

26 7. I also have determined that the balance of harms does not support granting an  
27 injunction. Hologic is “one of the world’s largest companies focused on advanced technology in  
28

women's health," is diversified, and generates significant revenue from a wide array of products.<sup>2</sup> Sales of MammoSite in the company's most recent fiscal quarter accounted for a very small fraction of overall revenue. [REDACTED]

[REDACTED] Lost profits and market share for SenoRx will not be recoverable if an injunction is granted.

#### IV. BACKGROUND

##### A. Therapeutic Category

8. My understanding is that breast cancer patients may be treated with "breast-conserving therapy," commonly referred to as lumpectomy, as an alternative to full mastectomy surgery.<sup>4</sup> When supplemented by whole-breast irradiation therapy, lumpectomy can treat early-stage breast cancer as effectively as mastectomy.<sup>5</sup> Indeed, lumpectomy followed by whole-breast irradiation confers certain benefits, including conservation of non-cancerous breast tissue.<sup>6</sup> While useful in reducing recurrence of cancer, however, whole-breast irradiation also entails drawbacks. Treatment is lengthy, lasting five to six weeks, and healthy breast tissue is unnecessarily exposed to radiation.<sup>7</sup> It is theorized that these factors cause as many as 20 percent of eligible patients to forgo radiation treatment following lumpectomy.<sup>8</sup>

<sup>2</sup> "Hologic and Cytac Complete Merger," Hologic 2007 News Release, October 22, 2007.

<sup>4</sup> "Accelerated Partial Breast Irradiation as Sole Radiotherapy After Breast-Conserving Surgery for Early Stage Breast Cancer," Blue Cross and Blue Shield Association Technology Evaluation Center Assessment Program, Volume 22, No. 4, August 2007, p. 1.

<sup>5</sup> Id.

<sup>6</sup> Cytac Corporation Form 10-K/A (Amendment No. 2) for the fiscal year ended December 31, 2006, p. 5.

<sup>7</sup> "Accelerated Partial Breast Irradiation as Sole Radiotherapy After Breast-Conserving Surgery for Early Stage Breast Cancer," Blue Cross and Blue Shield Association Technology Evaluation Center Assessment Program, Volume 22, No. 4, August 2007, p. 1.

<sup>8</sup> Hologic, Inc. Form 10-K for the fiscal year ended September 29, 2007, p. 12.

9. APBI, on the other hand, targets radiation treatment to only the breast area from which the tumor was excised.<sup>9</sup> Radiation exposure to healthy breast tissue is thereby diminished, and therapy is completed in four or five days, markedly shorter than the treatment period required for whole-breast irradiation.<sup>10</sup> By reducing radiation exposure and treatment duration, it is believed that APBI could induce more women to undergo post-lumpectomy radiation therapy and thus improve overall health outcomes for breast cancer patients.<sup>11</sup>

10. APBI can be administered via one of a variety of methods, including interstitial brachytherapy, balloon brachytherapy (a form of interstitial brachytherapy), intensity-modulated therapy, 3-dimensional conformal radiotherapy, and intraoperative radiotherapy.<sup>12</sup> Each treatment technique involves unique benefits and risks.<sup>13</sup> Balloon brachytherapy, for example, is prone to dose inhomogeneity and underdosing portions of the targeted area.<sup>14</sup> Because lumpectomy cavities often are irregularly shaped, the spherical source design of balloon brachytherapy catheters can result in poor conformance to the cavity wall.<sup>15</sup>

#### **B. Products**

11. In May 2002, the MammoSite radiation therapy system (“MammoSite”) received 510(k) marketing clearance by the U.S. Food and Drug Administration (“FDA”) as “substantially

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<sup>9</sup> “Accelerated Partial Breast Irradiation as Sole Radiotherapy After Breast-Conserving Surgery for Early Stage Breast Cancer,” Blue Cross and Blue Shield Association Technology Evaluation Center Assessment Program, Volume 22, No. 4, August 2007, p. 1.

<sup>10</sup> Id.

<sup>11</sup> “Accelerated Partial Breast Irradiation as Sole Radiotherapy After Breast-Conserving Surgery for Early Stage Breast Cancer,” Blue Cross and Blue Shield Association Technology Evaluation Center Assessment Program, Volume 22, No. 4, August 2007, p. 3.

<sup>12</sup> “Accelerated Partial Breast Irradiation as Sole Radiotherapy After Breast-Conserving Surgery for Early Stage Breast Cancer,” Blue Cross and Blue Shield Association Technology Evaluation Center Assessment Program, Volume 22, No. 4, August 2007, p. 1.

<sup>13</sup> “Accelerated Partial Breast Irradiation as Sole Radiotherapy After Breast-Conserving Surgery for Early Stage Breast Cancer,” Blue Cross and Blue Shield Association Technology Evaluation Center Assessment Program, Volume 22, No. 4, August 2007, p. 9.

<sup>14</sup> Id.

<sup>15</sup> Id.; SenoRx, Inc. Form S-1/A Registration Statement (Amendment No. 3), filed February 21, 2007, p. 2.

1 equivalent to other commercially available brachytherapy applicators used with sealed radiation  
 2 sources.”<sup>16</sup> MammoSite is a balloon brachytherapy device originally marketed by Proxima  
 3 Therapeutics, Inc. (“Proxima”).<sup>17</sup> Following a series of acquisitions, MammoSite is now marketed  
 4 by Hologic.<sup>18</sup> The MammoSite device comprises a “dual lumen catheter with a silicon balloon  
 5 and an applicator shaft that permits access through an external port” for administration of  
 6 radiation.<sup>19</sup>

7 12. Other brachytherapy systems also have received 510(k) FDA clearance. In  
 8 December 2005, Xofig was cleared to market its Axxent Electronic Radiotherapy device  
 9 (“Axxent”), a balloon brachytherapy system.<sup>20</sup> BioLucent, Inc. (“BioLucent”) received clearance  
 10 in October 2006 for its Strut-Adjusted Volume Implant (“SAVI”), a remote controlled  
 11 radionuclide applicator that combines elements of interstitial brachytherapy and balloon  
 12 brachytherapy.<sup>21</sup> In November 2006, the North American Scientific, Inc. (“North American  
 13 Scientific”) Adjustable Multi-Catheter Source Applicator, ClearPath, was cleared.<sup>22</sup> Finally, in  
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15 <sup>16</sup> “Accelerated Partial Breast Irradiation as Sole Radiotherapy After Breast-Conserving  
 16 Surgery for Early Stage Breast Cancer,” Blue Cross and Blue Shield Association Technology  
 17 Evaluation Center Assessment Program, Volume 22, No. 4, August 2007, p. 3; 510(k) Summary  
 of Safety and Effectiveness, dated May 6, 2002.

18 <sup>17</sup> “Proxima Therapeutics Announces FDA Clearance of MammoSite RTS, a Tumor Site-  
 19 Specific Radiation Therapy System for Breast Cancer,” BW HealthWire, May 6, 2007; Cytac  
 Corporation Form 10-K/A (Amendment No. 2) for the fiscal year ended December 31, 2006, p.  
 20 16.

21 <sup>18</sup> Hologic, Inc. Form 10-K for the fiscal year ended September 29, 2007, p. 12.

22 <sup>19</sup> “Accelerated Partial Breast Irradiation as Sole Radiotherapy After Breast-Conserving  
 Surgery for Early Stage Breast Cancer,” Blue Cross and Blue Shield Association Technology  
 Evaluation Center Assessment Program, Volume 22, No. 4, August 2007, p. 14.

23 <sup>20</sup> “Accelerated Partial Breast Irradiation as Sole Radiotherapy After Breast-Conserving  
 24 Surgery for Early Stage Breast Cancer,” Blue Cross and Blue Shield Association Technology  
 Evaluation Center Assessment Program, Volume 22, No. 4, August 2007, p. 15.

25 <sup>21</sup> Id.; Cianna Medical is now responsible for development and sales of SAVI. “Cianna  
 26 Medical Will Continue Innovation in SAVI Breast Brachytherapy Begun by BioLucent,” Press  
 Release, September 20, 2007.

27 <sup>22</sup> “Accelerated Partial Breast Irradiation as Sole Radiotherapy After Breast-Conserving  
 28 Surgery for Early Stage Breast Cancer,” Blue Cross and Blue Shield Association Technology  
 Evaluation Center Assessment Program, Volume 22, No. 4, August 2007, p. 15; “North

(continued...)

1 May 2007, SenoRx received marketing clearance for its SenoRad Multi-Lumen Balloon Source  
2 Applicator for Brachytherapy.<sup>23</sup> The SenoRx product is marketed under the name Contura.

3 13. Contura was first sold by SenoRx in June 2007 and was fully commercially  
4 launched on January 17, 2008.<sup>24</sup> At the time of launch, SenoRx expected Contura to assist in  
5 promoting use of APBI as an alternative to whole-breast irradiation treatment in eligible patients.  
6 In addition, the Contura “multi-lumen design” was meant to make APBI treatment available to  
7 certain patients previously excluded from brachytherapy due to breast size and location of the  
8 lesion.<sup>25</sup> Some “clinical sites are already reporting...that they are in fact able to treat patients that  
9 they don’t believe they have been in the past.”<sup>26</sup> The Contura also was designed to address  
10 drawbacks to balloon brachytherapy, including dosing imprecision stemming from poor balloon  
11 conformance within the lumpectomy cavity.<sup>27</sup> Vacuum suction assists in removing fluid around  
12 the balloon to improve treatment delivery.<sup>28</sup>

### 13 C. Patents at Issue

14 14. On July 2, 2002, Proxima was assigned U.S. Patent No. 6,413,204 (“the ‘204  
15 patent”), which relates to “Interstitial brachytherapy apparatus and method for treatment of  
16

17 (...continued from previous page)  
18 American Scientific Announces FDA Clearance of its ClearPath HDR Breast Brachytherapy  
19 System,” North American Scientific Press Release, November 14, 2006.

19 <sup>23</sup> “Accelerated Partial Breast Irradiation as Sole Radiotherapy After Breast-Conserving  
20 Surgery for Early Stage Breast Cancer,” Blue Cross and Blue Shield Association Technology  
21 Evaluation Center Assessment Program, Volume 22, No. 4, August 2007, p. 15; “SenoRx  
22 Announces 510(k) Clearance for its Multi-Lumen Radiation Balloon,” Press Release, May 23,  
23 2007.

22 <sup>24</sup> SenoRx, Inc. Form 10-Q for the period ended September 30, 2007, p. 15; “SenoRx  
23 Announces First Uses of its Multi-Lumen Radiation Balloon; Company Records First  
24 Commercial Sales of New Product,” Press Release, June 28, 2007; “SenoRx Launches Contura  
25 MLB,” Press Release, January 17, 2008.

25 <sup>25</sup> “SenoRx Launches Contura MLB,” Press Release, January 17, 2008.

26 <sup>26</sup> Factset: Callstreet Raw Transcript, SenoRx, Inc. Q4 2007 Earnings Call, February 19,  
27 2008, p. 11.

27 <sup>27</sup> “SenoRx Launches Contura MLB,” Press Release, January 17, 2008.

28 <sup>28</sup> Id.; Pacific Growth Equities analyst report, SenoRx, Inc., February 15, 2008, p. 2.



1 proliferative tissue diseases.” Proxima obtained U.S. Patent No. 6,482,142 (“the ‘142 patent”),  
 2 entitled “Asymmetric radiation dosing apparatus and method,” on November 19, 2002. The ‘204  
 3 and ‘142 patents (collectively “patents in suit”) were acquired by Cytyc through its purchase of  
 4 Proxima in March 2005.<sup>29</sup> On October 22, 2007, Cytyc was acquired by Hologic, Inc., resulting in  
 5 accrual of the patents in suit to Hologic.<sup>30</sup>

6 15. I understand that on December 22, 2005, Xoft filed suit against Cytyc and Proxima  
 7 with regard to the patents in suit and additional patents, alleging them invalid and not infringed by  
 8 Xoft.<sup>31</sup> This lawsuit settled on August 13, [REDACTED]  
 9 [REDACTED]

#### 10 **D. Parties**

11 16. Hologic is a medical technologies company that specializes in diagnostic imaging  
 12 products and interventional devices for women’s health.<sup>33</sup> On October 22, 2007, Hologic merged  
 13 with Cytyc to create “one of the largest companies in the world focused on advanced technology  
 14 in women’s health.”<sup>34</sup> The combined entity sells mammography and breast care products,  
 15 osteoporosis assessment instruments, imaging systems, diagnostic products, and surgical  
 16 products.<sup>35</sup> MammoSite is one of four surgical systems marketed by Hologic and is now a part of  
 17 Hologic’s Breast Health segment.<sup>36</sup>

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18  
 19 <sup>29</sup> Cytyc Corporation Form 10-K/A (Amendment No. 2) for the fiscal year ended December  
 31, 2006, pp. 16 and 34.

20 <sup>30</sup> Hologic, Inc. Form 10-K for the fiscal year ended September 29, 2007, pp. 3 and 5.

21 <sup>31</sup> Cytyc Corporation Form 10-K/A (Amendment No. 2) for the fiscal year ended December  
 22 31, 2006, p. 23.

23 <sup>32</sup> [REDACTED]  
 24 [REDACTED] Cytyc Form 8-K, Exhibit 99.1, “Cytyc and Xoft Settle Intellectual  
 Property Dispute,” Press Release dated August 15, 2007.

25 <sup>33</sup> Hologic, Inc. Form 10-K for the fiscal year ended September 29, 2007, p. 3.

26 <sup>34</sup> “Hologic and Cytyc Complete Merger,” Hologic 2007 News Release, October 22, 2007.

27 <sup>35</sup> Hologic, Inc. Form 10-K for the fiscal year ended September 29, 2007, pp. 5-12.

28 <sup>36</sup> Hologic, Inc. Form 10-K for the fiscal year ended September 29, 2007, pp. 11-12; Hologic,  
 Inc. Form 10-Q/A (Amendment No. 1) for the period ended December 29, 2007, pp. 43-44.



17. Hologic total revenue for the fiscal year ended September 29, 2007 was approximately \$738.4 million.<sup>37</sup> This figure excludes revenue from Cytyc, as the merger between the companies was not completed until after the close of the Hologic fiscal year.<sup>38</sup> Cytyc total revenue for its fiscal year ended December 31, 2006 was approximately \$608.3 million.<sup>39</sup> As a combined entity, revenue for the quarter ended December 29, 2007 exceeded \$371.4 million.<sup>40</sup> Reported sales of MammoSite were approximately \$7.8 million during this quarterly period.<sup>41</sup> Comparative income statements for Hologic and Cytyc are set forth at Exhibit 3. A summary of MammoSite sales is attached as Exhibit 4.

18. SenoRx was incorporated in 1998.<sup>42</sup> Until 2002, SenoRx was principally involved in the development and regulatory clearance of biopsy tissue markers and breast biopsy systems.<sup>43</sup> In 2008, SenoRx launched the Contura.<sup>44</sup> SenoRx continues to develop medical devices relating to breast health, including breast surgery and breast reconstruction devices, which are expected to launch in 2009.<sup>45</sup> SenoRx completed its initial public offering on April 3, 2007.<sup>46</sup>

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<sup>37</sup> Hologic, Inc. Form 10-K for the fiscal year ended September 29, 2007, p. 41.

<sup>38</sup> Hologic, Inc. Form 10-K for the fiscal year ended September 29, 2007, p. 5.

<sup>39</sup> Cytyc Corporation Form 10-K/A (Amendment No. 2) for the fiscal year ended December 31, 2006, p. F-4.

<sup>40</sup> This figure includes Cytyc revenue for the 10 week period beginning October 22, 2007. Hologic, Inc. Form 10-Q/A (Amendment No. 1) for the period ended December 29, 2007, pp. 4 and 7.

<sup>41</sup> Reported MammoSite revenues reflect sales for the 10 week period beginning October 22, 2007. Hologic, Inc. Form 10-Q/A (Amendment No. 1) for the period ended December 29, 2007, pp. 7 and 39.

<sup>42</sup> SenoRx, Inc. Form 10-Q for the period ended September 30, 2007, p. 13.

<sup>43</sup> Id.

<sup>44</sup> "SenoRx Launches Contura MLB," Press Release, January 17, 2008.

<sup>45</sup> SenoRx, Inc. Form 10-Q for the period ended September 30, 2007, p. 13.

<sup>46</sup> SenoRx, Inc. Form 10-Q for the period ended September 30, 2007, p. 7.

19. SenoRx revenue for the year ended December 31, 2007 was approximately \$35.0 million.<sup>47</sup> As of December 31, 2007, SenoRx held total assets of approximately \$42.1 million and total current assets of nearly \$40.6 million, including cash and cash equivalents and short term investments of approximately \$27.9 million.<sup>48</sup> Contura sales in 2007 generated \$542,000 in revenue.<sup>49</sup> SenoRx comparative financial statements are set forth at Exhibit 5. A summary of Contura sales is included at Exhibit 6.

**V. HOLOGIC WILL NOT BE IRREPARABLY HARMED SHOULD SENORX CONTINUE TO MARKET CONTURA**

20. In the present context, I understand that “irreparable harm” constitutes injury that cannot be quantified as monetary damages or, if quantified, for which the injured party cannot be made whole by the party causing the damage. In my opinion, Hologic would not experience “irreparable” harm should SenoRx be allowed to continue to market Contura prior to trial.

**A. Any Economic Damage is Recoverable Through a Monetary Award After Trial**

**i. Any Damage to Hologic is Readily Calculable**

21. It is my opinion that any harm to Hologic stemming from declines in MammoSite revenue, unit sales, average selling price, profits, or market share could be readily monitored, calculated, and awarded as damages. Data sufficient to determine such damages presently are available and will continue to be available through the conclusion of trial.

22. Hologic tracks sales of its MammoSite product and reports revenue figures in its public filings. In its most recent fiscal quarter, Hologic recorded \$7.8 million in revenue from MammoSite sales.<sup>50</sup> Prior to its merger with Hologic, Cytac also tracked sales of MammoSite and

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<sup>47</sup> “SenoRx Reports Revenue Growth of 43.2 Percent in Q4 2007 Compared with Q4 2006,” Press Release, February 19, 2008.

<sup>48</sup> Id.

<sup>49</sup> SenoRx Fourth Quarter/FY 2007 Conference Call Notes, February 19, 2008, p. 7.

<sup>50</sup> Hologic, Inc. Form 10-Q/A (Amendment No. 1) for the period ended December 29, 2007, p. 39.

1 reported them in its SEC filings.<sup>51</sup> In addition, Hologic reports business results from each of its  
 2 operating segments, including Breast Health.<sup>52</sup> For each segment, revenue and operating income  
 3 generated by its products are recorded. As such, Hologic tracks expenses associated with products  
 4 it sells, including MammoSite, which is part of the Breast Health segment [REDACTED]  
 5 [REDACTED] SenoRx also  
 6 closely tracks its product sales, including sales of Contura.<sup>54</sup>

7 23. To the extent any economic harm accrues to Hologic due to continued sales of  
 8 Contura by SenoRx, these data would be sufficient to estimate any lost profits or other economic  
 9 damages.

10 **ii. Any Decreases in the Price or Market Share of MammoSite Will Be**  
 11 **Measurable and Quantifiable as Monetary Damages**

12 24. Any price reductions in the MammoSite would be readily observable, measurable,  
 13 and quantifiable as monetary damage. As discussed above, Hologic tracks the revenue and unit  
 14 sales performance of MammoSite. Hologic's own business records could be used to monitor any  
 15 price declines, for which Hologic could be remunerated with an award of price erosion damages at  
 16 the conclusion of trial.

17 25. Were any price declines attributable to SenoRx's marketing of Contura to occur,  
 18 Hologic would be able fully to restore MammoSite price levels following removal of Contura at  
 19 the conclusion of trial. Any suggestion that the price of MammoSite would be irreversibly  
 20 depressed as a result of the marketing of Contura is speculative. To the extent, however, that  
 21 Hologic would be unable to recover its pricing of MammoSite, forecasts of MammoSite pricing  
 22 "but for" sales of Contura could be used to compute price erosion damages, a calculable measure

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 24 <sup>51</sup> Cytac Corporation Form 10-Q for the period ended June 30, 2007, p. 28; Cytac  
 Corporation Form 10-K/A (Amendment No. 2) for the period ended December 31, 2006, p. 32.

25 <sup>52</sup> Hologic, Inc. Form 10-Q/A (Amendment No. 1) for the period ended December 29, 2007,  
 26 pp. 38 and 43-44.

27 <sup>53</sup> Declaration of Glenn Magnuson in Support of Plaintiffs' Motion for Preliminary  
 Injunction, pp. 7-9.

28 <sup>54</sup> SenoRx Fourth Quarter/FY 2007 Conference Call Notes, February 19, 2008, p. 7.

1 of economic harm. This is a standard approach to calculating such damage in patent infringement  
2 cases.

3 26. Though damages associated with any decreases in the price of MammoSite are  
4 measurable and remediable through a monetary award, it is not apparent why MammoSite price  
5 should decline with Contura on the market [REDACTED]

6 [REDACTED]  
7 [REDACTED]  
8 27. [REDACTED]  
9 [REDACTED]  
10 [REDACTED]  
11 [REDACTED]  
12 [REDACTED]  
13 [REDACTED]  
14 [REDACTED]  
15 [REDACTED]  
16 [REDACTED]  
17 [REDACTED]

18 28. I understand Hologic also contends that any market share loss to Contura will be  
19 unrecoverable because the APBI market is “nascent” and “high-growth.”<sup>60</sup> As an initial matter, it  
20 is unclear that the market in question is “nascent” or “high-growth.” The MammoSite product

21 \_\_\_\_\_  
22 <sup>55</sup> Declaration of Glenn Magnuson in Support of Plaintiffs’ Motion for Preliminary  
Injunction, p. 9.

23 <sup>56</sup> SenoRx, Inc. Board of Directors’ Meeting Presentation, September 26, 2007, p. 14.

24 <sup>57</sup> The suggested retail price of MammoSite is \$2,750 per unit. Deposition of Glenn  
25 Magnuson, March 18, 2008, p. 133.

26 <sup>58</sup> Declaration of Glenn Magnuson in Support of Plaintiffs’ Motion for Preliminary  
Injunction, p. 9.

27 <sup>59</sup> SenoRx, Inc. General Session Presentation of 2008 Operating Plan, p. 21.

28 <sup>60</sup> Plaintiffs’ Notice of Motion and Motion for Preliminary Injunction, p. 21.

1 was cleared by the FDA in 2002; for at least five years MammoSite has been available for use.<sup>61</sup>  
 2 Prior to MammoSite, other APBI methods, including interstitial brachytherapy, had been  
 3 developed for treatment of breast cancer.<sup>62</sup> [REDACTED]

4 [REDACTED] Indeed, I  
 5 understand there has been a recent slowdown in the balloon brachytherapy market.<sup>64</sup> Given that  
 6 [REDACTED]

7 and that a recent slowdown has been observed, it is not clear how the market can be characterized  
 8 as “high-growth.”

9 29. Regardless, any temporary MammoSite market share losses would be measurable  
 10 and recoverable at the end of trial. Moreover, if it is true, as Hologic contends, that “Hologic is  
 11 the only current supplier of radionuclide-based balloon applicators for breast brachytherapy” then,  
 12 upon the Contura’s removal at the end of trial, MammoSite would immediately recover its share  
 13 of the market.<sup>65</sup>

14 **B. SenoRx Has Assets Sufficient to Pay Any Money Judgment Likely to Be**  
 15 **Awarded in This Matter**

16 30. SenoRx has more than adequate assets to fund any damages payment. SenoRx  
 17 cash and cash equivalents and short term investments held as of December 31, 2007, were valued  
 18  
 19

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20 <sup>61</sup> “Accelerated Partial Breast Irradiation as Sole Radiotherapy After Breast-Conserving  
 21 Surgery for Early Stage Breast Cancer,” Blue Cross and Blue Shield Association Technology  
 22 Evaluation Center Assessment Program, Volume 22, No. 4, August 2007, p. 3; 510(k) Summary  
 of Safety and Effectiveness, dated May 6, 2002.

23 <sup>62</sup> “Accelerated Partial Breast Irradiation as Sole Radiotherapy After Breast-Conserving  
 24 Surgery for Early Stage Breast Cancer,” Blue Cross and Blue Shield Association Technology  
 Evaluation Center Assessment Program, Volume 22, No. 4, August 2007, p. 14.

25 <sup>63</sup> Declaration of Glenn Magnuson in Support of Plaintiffs’ Motion for Preliminary  
 26 Injunction, pp. 6-7.

27 <sup>64</sup> Citigroup Global Markets Equity Research analyst report, SenoRx Inc, February 19, 2008,  
 p. 14.

28 <sup>65</sup> Plaintiffs’ Notice of Motion and Motion for Preliminary Injunction, p. 21.

1 at approximately \$27.9 million.<sup>66</sup> Total current assets were \$40.6 million, and total assets equaled  
 2 approximately \$42.1 million as of that date.<sup>67</sup>

3 31. [REDACTED]

4 [REDACTED] [REDACTED] With nearly \$30 million in cash, cash equivalents and short term  
 5 investments alone, even if every dollar of expected Contura revenue resulted in a dollar of  
 6 economic damage to Hologic, the assets discussed above are sufficient to pay such an award.

7 32. Moreover, total Contura revenue significantly overstates likely damages from the  
 8 alleged infringement. [REDACTED]

15 **C. Hologic's License [REDACTED] Demonstrates**  
 16 **Competitive Harm is Not Irreparable**

17 33. [REDACTED]

19 <sup>66</sup> "SenoRx Reports Revenue Growth of 43.2 Percent in Q4 2007 Compared with Q4 2006,"  
 20 Press Release, February 19, 2008.

21 <sup>67</sup> Id.

22 <sup>68</sup> SenoRx, Inc. General Session Presentation of 2008 Operating Plan, pp. 92 and 109.

23 <sup>69</sup> [REDACTED]

24 <sup>70</sup> Declaration of Glenn Magnuson in Support of Plaintiffs' Motion for Preliminary  
 25 Injunction, p. 7.

26 <sup>71</sup> [REDACTED]

1 [REDACTED]  
 2 [REDACTED]  
 3 34. [REDACTED]  
 4 [REDACTED]  
 5 [REDACTED]  
 6 [REDACTED]  
 7 [REDACTED]  
 8 [REDACTED]  
 9 [REDACTED]

10 **D. Other Aspects of Alleged Irreparable Harm**

11 **i. Hologic Will Not Suffer Any Loss of Reputation**

12 35. [REDACTED]  
 13 [REDACTED]  
 14 [REDACTED]  
 15 [REDACTED]

16 I understand, however, that it is a matter of contention  
 17 whether Contura even infringes the patents in suit. I also understand that there are questions of  
 18 validity regarding those patents. Hence, if it is proven either that Contura does not infringe  
 19 Hologic's patents or that those patents are invalid, then Contura's marketing will have no relation  
 20 to Hologic's intellectual property position. Additionally, Hologic already has sent a message that  
 21 it will seek to enforce its intellectual property rights by filing a patent infringement suit against

22 <sup>72</sup> Deposition of Glenn Magnuson, March 18, 2008, p. 208.

23 <sup>73</sup> "Cianna Medical Will Continue Innovation in SAVI Breast Brachytherapy Begun by  
 24 BioLucent," September 20, 2007.

25 <sup>74</sup> "SAVI Breast Brachytherapy Reaches 100-Patient Milestone," October 22, 2007.

26 <sup>75</sup> "Cianna Medical Will Continue Innovation in SAVI Breast Brachytherapy Begun by  
 27 BioLucent," September 20, 2007. Cianna Medical website, About Cianna  
 28 (www.ciannamedical.com).

<sup>76</sup> Declaration of Glenn Magnuson in Support of Plaintiffs' Motion for Preliminary  
 Injunction, p. 10.



1 SenoRx. Contura's continued marketing before trial does not undermine Hologic's reputation or  
 2 indicate that Hologic will not protect its intellectual property.

3 **ii. Contura's Availability Will Not Harm the APBI Market**

4 36. [REDACTED]

5 [REDACTED]  
 6 [REDACTED]  
 7 [REDACTED]  
 8 [REDACTED] I note, however, that other  
 9 APBI treatments were available prior to MammoSite and that MammoSite received 510(k)  
 10 clearance from the FDA because it was "substantially equivalent to other commercially available  
 11 brachytherapy applicators."<sup>78</sup> In addition, efforts similar to those made on behalf of MammoSite  
 12 have been undertaken by SenoRx, Cianna Medical (and BioLucent before them), and Xofig. Each  
 13 of these companies has invested resources to develop, test, and refine their respective  
 14 brachytherapy products. They also have sponsored symposia and publications, provided education  
 15 and training, and performed clinical evaluations.<sup>79</sup> If investing money to develop APBI products  
 16

17 <sup>77</sup> Declaration of Glenn Magnuson in Support of Plaintiffs' Motion for Preliminary  
 18 Injunction, pp. 5-6, 8.

19 <sup>78</sup> "Accelerated Partial Breast Irradiation as Sole Radiotherapy After Breast-Conserving  
 20 Surgery for Early Stage Breast Cancer," Blue Cross and Blue Shield Association Technology  
 21 Evaluation Center Assessment Program, Volume 22, No. 4, August 2007, p. 3; 510(k) Summary  
 22 of Safety and Effectiveness, dated May 6, 2002.

23 <sup>79</sup> [REDACTED] SenoRx Announces First  
 24 Uses of its Multi-Lumen Radiation Balloon; Company Records First Commercial Sales of New  
 25 Product," Press Release, June 28, 2007. "SenoRx Launches Contura MLB," Press Release,  
 26 January 17, 2008. Factset: Callstreet Raw Transcript, SenoRx, Inc. Q4 2007 Earnings Call,  
 27 February 19, 2008, p. 2. "North American Scientific Introduces ClearPath at ASTRO," Press  
 28 Release, November 8, 2006. "North American Scientific Showcases CLEARPATH-HDR at  
 ASTRO," Press Release, November 8, 2007. "SAVI Produces Promising Results, Doctors  
 Report at ASCO Meeting," Press Release, October 9, 2007. "SAVI Applicator for Breast  
 Brachytherapy May Optimize Treatment and Spare Healthy Tissue, Study Finds," Press Release,  
 October 25, 2007. "New Technology to Treat Breast Cancer Shows Promise in Early  
 Application," University of California, San Diego Medical Center Moores Cancer Center News,  
 November 19, 2007. "New Research at UCSD Shows SAVI Breast Brachytherapy Has Multiple  
 Benefits," Press Release, December 5, 2007. "Momentum for Xofig's Electronic Brachytherapy  
 (continued...)

1 and educate physicians and the public about their use is what constitutes “creation and  
2 development” of a market, then SenoRx, Cianna Medical, and Xoft are also contributing to the  
3 development of the APBI market.

4 **iii. Sales of Contura Will Not Cause Hologic to Forgo Additional Research**  
5 **and Development Investment in MammoSite or Prevent Recoupment**  
6 **of its Investments**

7 37. The relationship between MammoSite sales and Hologic’s research and  
8 development efforts is tenuous. During Hologic’s most recent fiscal quarter, MammoSite sales  
9 accounted for no more than three percent of revenue.<sup>80</sup> More than \$360 million in revenue was  
10 generated from Hologic’s sales of its broad array of other products, completely independent of  
11 MammoSite.<sup>81</sup> Hologic has myriad revenue streams from which to draw in support of research  
12 and development.<sup>82</sup> For a corporation as large and diversified as Hologic, a temporary decline in  
13 sales of one product – particularly one that accounts for such a small proportion of overall revenue  
14 – is unlikely to have any impact on research and development efforts.

15 38. In addition, recovery of research and development investments in MammoSite can  
16 be achieved whether Contura sales are allowed to continue or are enjoined. Hologic can be fully  
17 remunerated by a damages award that would place it in the same position it would have occupied  
18 “but for” Contura sales.

19 **iv. Continued Marketing of Contura Will Not Induce Competitive Entry**

20 39. No fewer than three APBI products other than MammoSite and Contura have  
21 received FDA 510(k) clearance.<sup>83</sup> Those products include the Xoft Axxent, Cianna Medical

22 (...continued from previous page)  
23 System Grows with Six Papers Accepted for Presentation at AAPM,” Press Release, July 25,  
24 2006.

25 <sup>80</sup> Exhibit 4.

26 <sup>81</sup> Exhibit 4.

27 <sup>82</sup> Hologic, Inc. Form 10-K for the fiscal year ended September 29, 2007, pp. 5-12.

28 <sup>83</sup> “Accelerated Partial Breast Irradiation as Sole Radiotherapy After Breast-Conserving  
Surgery for Early Stage Breast Cancer,” Blue Cross and Blue Shield Association Technology  
Evaluation Center Assessment Program, Volume 22, No. 4, August 2007, p. 15.

SAVI, and North American Scientific ClearPath. Each of these three APBI systems received 510(k) clearance before Contura, and one of those products, the Axxent, was commercially available prior to Contura's launch.<sup>84</sup> SAVI and ClearPath also were used to treat patients before Contura launched.<sup>85</sup> The decisions of Xoft, Cianna Medical, and North American Scientific to market APBI products were made independent of the marketing of Contura. If the marketing of any APBI product has induced or would induce competitive entry, it is Xoft's Axxent, sales of which Cytac itself decided to allow. [REDACTED] Cianna Medical, a firm with no products other than the SAVI brachytherapy system.<sup>86</sup>

## **VI. BALANCE OF HARMS DOES NOT SUPPORT GRANTING THE INJUNCTION**

40. In my opinion, the harm SenoRx will experience if the injunction is granted exceeds that of Hologic.

41. Contura is a singularly important product for SenoRx. SenoRx only recently completed its IPO in April 2007 [REDACTED]

<sup>84</sup> Id.; Cytac Form 8-K, Exhibit 99.1, "Cytac and Xoft Settle Intellectual Property Dispute," Press Release dated August 15, 2007

<sup>85</sup> "SAVI Breast Brachytherapy Reaches 100-Patient Milestone," Press Release, October 22, 2007; "North American Scientific Announces First ClearPath-HDR Clinical Experience," Press Release, September 28, 2007.

<sup>86</sup> Cianna Medical website, About Cianna (www.ciannamedical.com). Deposition of Glenn Magnuson, March 18, 2008, pp. 208 and 210.

<sup>87</sup> SenoRx, Inc. Board of Directors' Meeting Presentation, February 27, 2008, p. 60. SenoRx, Inc. Board of Directors' Meeting Presentation, September 26, 2007, pp. 81-82.

<sup>88</sup> SenoRx, Inc. Board of Directors' Meeting Presentation, February 27, 2008, p. 33.

42. SenoRx has invested significant resources in developing Contura, conducting pre-launch evaluations, and securing three patents on the product with additional patents pending.<sup>89</sup> SenoRx expects Contura to be a substantial contributor to the company's future growth and creation of revenue.<sup>90</sup>

Lost profits and market share for SenoRx will not be recoverable if a preliminary injunction is granted.

43.

44. Hologic, on the other hand, will not experience any unrecoverable losses. Any harm can be quantified and awarded as monetary damages upon completion of trial. Also, unlike SenoRx, a small company with heavy dependence on the success of Contura, Hologic is a diversified corporation and "one of the world's largest companies focused on advanced technology in women's health" with little reliance on MammoSite sales.<sup>94</sup> In fact, the overwhelming majority of Hologic's business is unrelated to MammoSite. In Hologic's most recent fiscal quarter, ended

<sup>89</sup> "SenoRx Launches Contura MLB," Press Release, January 18, 2007; SenoRx, Inc. Form 10-Q for the period ended September 30, 2007, p. 15.

<sup>90</sup> SenoRx, Inc. Form 10-Q for the period ended September 30, 2007, p. 20.

<sup>91</sup>

<sup>92</sup> SenoRx, Inc. 2007 Operating Plan, pp. 10-11.

<sup>93</sup> Declaration of William Gearhart, Paragraph 21.

<sup>94</sup> "Hologic and Cytac Complete Merger," Hologic 2007 News Release, October 22, 2007.

1 December 29, 2007, it reported MammoSite revenue of approximately \$7.8 million.<sup>95</sup> Hologic  
2 total revenue during the period exceeded \$371.4 million.<sup>96</sup> MammoSite accounted for no more  
3 than three percent of Hologic revenue. Accordingly, it is not evident that changes in the level of  
4 MammoSite sales, up or down, would significantly affect Hologic.

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26 <sup>95</sup> Hologic, Inc. Form 10-Q/A (Amendment No. 1) for the period ended December 29, 2007,  
27 p. 39.

28 <sup>96</sup> Hologic, Inc. Form 10-Q/A (Amendment No. 1) for the period ended December 29, 2007,  
p. 4.

1 I declare under penalty of perjury that the foregoing is true and correct.

2

3 Dated: March 28th, 2008

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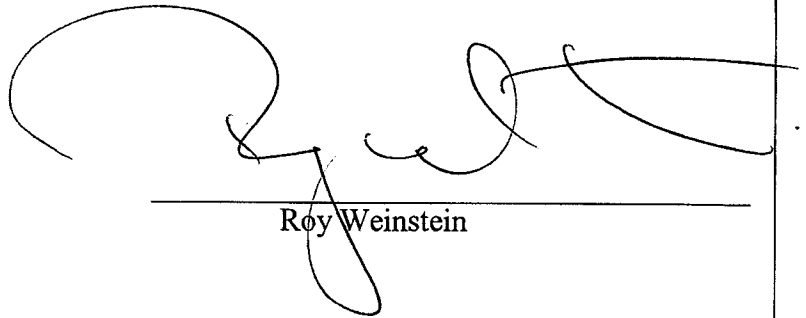
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A handwritten signature in black ink, appearing to read 'Roy Weinstein', is written over a horizontal line. The signature is stylized with large loops and a long horizontal stroke extending to the right.

Roy Weinstein

CERTIFICATE OF SERVICE

U.S. District Court, Northern District of California,  
*Hologic, Inc. et al. v. SenoRx, Inc.*  
Case No. C-08-0133 RMW (RS)

I, Kirsten Blue, declare:

I am and was at the time of the service mentioned in this declaration, employed in the County of San Diego, California. I am over the age of 18 years and not a party to the within action. My business address is 12235 El Camino Real, Ste. 200, San Diego, CA, 92130.

On March 28, 2008, I served a copy(ies) of the following document(s):

**DECLARATION OF ROY WEINSTEIN IN SUPPORT OF DEFENDANT  
SENORX, INC.'S OPPOSITION TO PLAINTIFFS' MOTION FOR A  
PRELIMINARY INJUNCTION [REDACTED VERSION]**

on the parties to this action by placing them in a sealed envelope(s) addressed as follows:

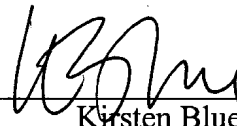
Henry C. Su (suh@howrey.com)	Attorneys for Plaintiffs
Katharine L. Altemus (altemusk@howrey.com)	HOLOGIC, INC. CYTYC
HOWREY LLP	CORPORATION and
1950 University Avenue, 4th Floor	HOLOGIC LP
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☒ (BY ELECTRONIC MAIL) I caused such document(s) to be sent via electronic mail (email) to the above listed names and email addresses.

☒ (BY CM/ECF) I caused such document(s) to be sent via electronic mail through the Case Management/Electronic Case File system with the U.S. District Court for the Northern District of California.

I declare under penalty of perjury under the laws of the United States that the above is true and correct, and that this declaration was executed on March 28, 2008.

  
Kirsten Blue



# Exhibit 1

**MICRONOMICS**  
*Economic Research & Consulting*

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**ROY WEINSTEIN**  
**President**

**Prior Experience**

**Industrial Organization; Antitrust Economics; Patent Damages and the Valuation of Intellectual Property; Royalty Audits; Transfer Pricing; Employment Litigation; Alter Ego; Bankruptcy; Econometrics; Statistical Analysis; Surveys and Sampling; Damages Calculations**

**Expert Testimony**

**U.S. District Courts (Alabama, Illinois, Wisconsin, Washington, Rhode Island, New York, California, Colorado, Missouri, Kansas, Arizona, Indiana, New Mexico, Oregon, Alaska, Georgia, Louisiana, Minnesota, Texas, Delaware, Virginia, Michigan)**

**U.S. Bankruptcy Court**

**State Courts (Arizona, California, Florida, Illinois, New Jersey, New York, Ohio, Washington)**

**California Public Utilities Commission**

**Texas Commissioner of Insurance**

**American Arbitration Association**

**Judicial Arbitration and Mediation Service**

**Federal Trade Commission**

**International Trade Commission**

**Commodity Futures Trading Commission**

**Provincial Division, Ontario, Canada**

**International Court of Arbitration**

**Consultant**

**United States Department of Justice, Antitrust Division**

**Federal Trade Commission**

**United States Internal Revenue Service**

**Attorneys General for the States of Arizona, California, Connecticut, Florida, Idaho, Illinois, Maine, Maryland, Massachusetts, Minnesota, Nevada, New Jersey, New Mexico, North Carolina, Ohio, Oregon, Pennsylvania, Tennessee, Texas, Washington, Wisconsin**

**Office of the Governor, State of California**

**Industry Experience**

<b>Aerospace</b>	<b>Insurance</b>
<b>Agriculture</b>	<b>Manufacturing</b>
<b>Automotive</b>	<b>Medical products and devices</b>
<b>Banking and financial services</b>	<b>Motion pictures</b>
<b>Biotechnology</b>	<b>Oil and gas</b>
<b>Chemicals</b>	<b>Paper</b>
<b>Cigarettes</b>	<b>Pharmaceuticals</b>
<b>Computer hardware and software</b>	<b>Printing and publishing</b>
<b>Construction</b>	<b>Railroad</b>
<b>Consumer Electronics</b>	<b>Real estate</b>
<b>Energy</b>	<b>Securities</b>
<b>Entertainment</b>	<b>Semiconductors</b>
<b>Financial services</b>	<b>Sports</b>
<b>Food products</b>	<b>Steel</b>
<b>Forest products</b>	<b>Supermarkets</b>
<b>Gaming</b>	<b>Telecommunications</b>
<b>Health care</b>	<b>Transportation</b>
<b>Hotels</b>	

**Publications**

1. "Industry Norms and Reasonable Royalty Rate Determination" (with Michelle Porter and Robert Mills), *les Nouvelles* (Licensing Executives Society), March 2008
2. "Antitrust Aspects of Barriers to Entry" (with John D. Culbertson), *UCLA Law First Annual Institute on US and EU Antitrust Aspects of Mergers and Acquisitions* (UCLA School of Law), February 2004
3. "An Analytical Solution to Reasonable Royalty Rate Calculations" (with William Choi), *The Journal of Law and Technology*, Vol. 41, No. 1, 2001
4. "Valuing Patents and Intangible Assets in the Semiconductor Industry," *The Licensing Journal* (with Shane Huang), February 1999
5. "Measuring Year 2000 Damages: A General Approach to Estimating Losses Caused by Non-Compliant Software," *Wall Street Lawyer*, May 1998
6. "How U.S. Antitrust Can Be on Target: The Brand-Name Prescription Drug Litigation," *International Journal of the Economics of Business*, November 1997
7. "Unfair Practices Act: The Problem of New Entrants" (with Gail Fruchtman), *Competition*, The Journal of the Antitrust and Trade Regulation Law Section of the State Bar of California, April 1994
8. "Product Substitutes and the Calculation of Patent Damages" (with John Culbertson), *Journal of the Patent and Trademark Office Society*, November 1988
9. "The Use of an Economic Expert in Criminal Antitrust Cases" (with Jeffrey Leitzinger), *Criminal Antitrust Litigation Manual* (American Bar Association), 1983
10. "Estimating Lost Sales, Profits: A Hypothetical Look at the Real Issue" (with Peter Max), *The National Law Journal*, February 1979

Roy Weinstein

Page 3

11. "Good Bids and Bad: Can Economists Tell the Difference?" *California State Bar Journal*, November/December 1978
12. "A Broad View of Collusion" (with Mark Stelnik), *The Antitrust Bulletin*, Fall 1971

Speeches

1. "The Art of Noticing' and What Makes for a Great Expert Witness," Law Seminars International, Effective Development & Presentation of Expert Testimony, Chicago, Illinois, September 2007
2. "Cel-Tech, Unfair Competition and Intent," California's Unfair Competition Law after Prop. 64, 4<sup>th</sup> Annual Unfair Competition Law Program of The Antitrust and Unfair Competition Section of the State Bar of California, Omni Hotel, San Francisco, California, May 19, 2006
3. "The Science of Economics and Challenges to Expert Testimony," Law Seminars International, Effective Development and Presentation of Expert Testimony, The Mid-America Club, Chicago, Illinois, March 21, 2006
4. "Antitrust Aspects of Barriers to Entry" (with John D. Culbertson), UCLA First Annual Institute on US and EU Antitrust Aspects of Mergers and Acquisitions, Ritz-Carlton Hotel, Marina del Rey, Los Angeles, California, February 27 & 28, 2004
5. "The Economic Impact of the Year 2000 Problem," The Year 2000 Computer Crisis: The Litigation Summit, Bonaventure Hotel, Los Angeles, January 1999
6. "Valuing Intellectual Property," California Mandatory Continuing Legal Education Program, Los Angeles, January 1999
7. "Valuing Intellectual Capital," 1999 Advanced Strategies for Knowledge Management, Valuation of Intellectual Capital Seminar, Los Angeles, August 1998 and New York City, September 1998
8. Loss Prevention Programs, Trial of a Legal Malpractice Case, Attorneys' Liability Assurance Society, Inc., Southampton Princess Hotel, Bermuda, June 1998
9. "Valuation of Intangible Assets: Economic Analysis v. Accounting Convention," Steering Committee, Litigation Section, California Society of Certified Public Accountants, May 1998
10. "The Relationship Between Patent Damage Models and Antitrust Analysis," Antitrust Section, Los Angeles County Bar Association, March 1995
11. Roundtable --Cellular Regulation, State of California, Governor's Office of Planning and Research, Sacramento, California, July 1994
12. California Mandatory Continuing Legal Education Program:  
"Valuing Intellectual Property," January 1994  
"Economic Efficiency and the Legal System," October 1993
13. "An Economic Vision for Los Angeles," Los Angeles City Council, Community & Economic Development Program, April 1993

**Roy Weinstein**

**Page 4**

14. "Assessing the Economic Impact of the BankAmerica-Security Pacific Bank Merger," UCLA Law School, Los Angeles, California, April 1992
15. Forum on Intellectual Property, sponsored by Micronomics, San Francisco, California, April 1991
16. "Calculating Damages in an Antitrust Case," Antitrust Section, Los Angeles County Bar Association, Los Angeles, California, November 1986
17. "What an Expert Expects from the Attorney," Association of Business Trial Lawyers, Maui, Hawaii, October 1986
18. "Proper and Improper Uses of an Economic Consultant," Antitrust Section, Los Angeles County Bar Association, Los Angeles, California, April 1985
19. "What Does an Economic Consultant Do in Antitrust Cases?" Antitrust Section, Los Angeles County Bar Association, Los Angeles, California, November 1981
20. "Vertical Price Restraints: The Uneasy Case for a Per Se Prohibition," Stanford University, National Association of Attorneys General, Palo Alto, California, August 1981
21. "Projection and Methods of Proof of Lost Profits By an Economist" (with Peter Max), American Bar Association Section of Litigation, Washington, D.C., November 1978
22. Panel-The Use of Experts in Corporate Litigation, Seminar sponsored by the New York Law Journal, New York, New York, November 1978
23. Panel-The Use of Experts in Corporate Litigation, Seminar sponsored by the New York Law Journal, San Francisco, California, October 1978
24. "Good Bids and Bad: Can Economists Tell the Difference?" Midwest Economics Association, Chicago, Illinois, April 1978
25. "The Impact of Urbanization on the Demand for Energy," Western Resources Conference, Denver, Colorado, July 1970

#### **Education**

M.A., Economics, University of Chicago, 1967

B.B.A., *cum laude*, with Honors in Economics, City College New York, 1964

#### **Honors and Awards**

Career Achievement Award, Business and Economics Alumni Society of City College, New York

Fellowship from U.S. Public Health Service, University of Chicago

Fellowship from Walgreen Foundation, University of Chicago

**Roy Weinstein**

**Page 5**

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**Higgons Award for academic excellence, City College New York**

**Berliner Award, City College New York**

**First Prize--State-wide competition sponsored by Industrial Relations Research Association, City College New York**

**Affiliations**

**American Economic Association**

**National Association for Business Economics**

**American Bar Association, Section of Antitrust Law**

**Los Angeles County Bar Association**

**Past President, University Synagogue, Los Angeles**

**Los Angeles Sports and Entertainment Commission Advisory Board**

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**ROY WEINSTEIN**  
*Prior Testimony*

Proceeding	Court/Commission/Agency	Docket or File	Deposition/ Trial	Date	On Behalf Of
1. <u>The Cast Iron Pipe Antitrust Cases</u>	U.S. District Court, Northern District of Alabama	No. 71-516	Deposition Trial	May 1973 June 1973	Plaintiff
2. <u>U.S. Amsted Industries, Inc. and Glamorgan Pipe &amp; Foundry Co.</u>	U.S. District Court, Northern District of Illinois, Eastern Division	No. 71 C 3124	Trial	December 1973	Plaintiff
3. <u>In the Matter of Retail Credit Corporation</u>	Federal Trade Commission	8920	Hearing	May 1975	Respondent
4. <u>Washington Suburban Sanitary Commission v. U.S. Pipe &amp; Foundry Co.</u>	U.S. District Court, Northern District of Alabama, Southern District	No. 71-156	Deposition Trial	December 1975 February 1976	Plaintiff
5. <u>American Micro-Systems, Inc. v. The Garrett Corp., et al.</u>	Superior Court of the State of California, County of Los Angeles	No. C-30042	Deposition Deposition	January 1976 February 1976	Defendant
6. <u>In the Matter of Boise Cascade, et al.</u>	Federal Trade Commission	8958	Hearing	March 1976	Respondents
7. <u>In the Matter of Certain Welded Stainless Steel Pipe and Tube</u>	International Trade Commission	Investigation 337-TA-29	Hearing	September 1977	Complainants



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**ROY WEINSTEIN**  
*Prior Testimony*

Proceeding	Court/Commission/Agency	Docket or File	Deposition/ Trial	Date	On Behalf Of
8. <u>Globe-Union, Inc. v. UV Industries, Inc.</u>	U.S. District Court, Eastern District of Wisconsin	No. 77-C-711	Deposition Trial	March 1978 May 1978	Plaintiff
9. <u>The Fed-Mart Corporation v. Nicholas Pellegrino, et al.</u>	Superior Court of the State of California	No. 339 175	Deposition Trial	June 1978 July 1978	Plaintiff
10. <u>Granada de Nueva Andalucia, et al. v. Short, Cressman &amp; Cable, et al.</u>	Superior Court of the State of Washington at Seattle	No. 839555	Deposition Deposition Trial	May 1979 June 1979 June 1979	Defendant
11. <u>Tri-M Erectors, Inc. v. Bethlehem Steel Corp., et al.</u>	U.S. District Court, Western District of Washington	No. C75-767M	Deposition Deposition Trial	June 1979 August 1979 April 1980 June 1980	Plaintiff
12. <u>Golob &amp; Sons, Inc., et al. v. Schaafe Packing Co., Inc., et al.</u>	Superior Court of the State of Washington, County of King	No. 821-982	Deposition	July 1979	Plaintiff
13. <u>Levine Distributors, Inc. v. Sony Corporation, et al.</u>	U.S. District Court, District of Rhode Island	No. 77-0109	Deposition Trial	February 1980 February 1980	Defendant
14. <u>Vernon F. Ball, et al. v. Stadelman Fruit, Inc., et al.</u>	U.S. District Court, Eastern District of Washington	No. C-77-94	Deposition Deposition	March 1980 February 1981	Plaintiff

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**ROY WEINSTEIN**  
*Prior Testimony*

Proceeding	Court/Commission/Agency	Docket or File	Deposition/ Trial	Date	On Behalf Of
15. <u>In Re Folding Carton Antitrust Litigation</u>	U.S. District Court, Northern District of Illinois	MDL 250	Deposition	July 1980	Defendant
16. <u>Paul A. Simmons, et ux. et al., v. Roth Young Personnel Service, Inc., a New York corporation</u>	U.S. District Court, Western District of Washington	No. C74-50S	Trial	July 1980	Defendant
17. <u>Mendel Schwinner dba. Supersonic Electronics Co. v. Sony Corp. of America and Sony Corp.</u>	U.S. District Court, Eastern District of New York	No. 77-1275	Deposition Trial	November 1980 November 1980	Defendant
18. <u>The Bohack Corporation v. Iowa Beef Processors, Inc., et al.</u>	U.S. District Court, Eastern District of New York	No. 77 C 1673	Trial Trial	May 1981 May 1982	Defendant
19. <u>Tuesday Productions, Inc. v. American Federation of Television and Radio Artists, et al.</u>	U.S. District Court, Southern District of California	No. 78-0644-K(l)	Deposition Deposition Trial Trial	October 1981 March 1982 April 1982 May 1982	Plaintiff
20. <u>Mail Company Liquidators, Inc. v. Toshiba Corporation and Toshiba America, Inc.</u>	U.S. District Court, Southern District of California	No. 79-1925-G	Deposition Trial Trial	October 1981 November 1981 December 1981	Defendant

**MICRONOMICS**

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213/629-2655

**ROY WEINSTEIN**  
*Prior Testimony*

Proceeding	Court/Commission/Agency	Docket or File	Deposition/ Trial	Date	On Behalf Of
21. <u>In the Matter of Monex International, Ltd.</u>	Commodity Futures Trading Commission	No. 79-57	Trial Trial	November 1981 June 1982	Respondent
22. <u>World of Sleep, Inc. v. La-Z-Boy Chair Co., et al.</u>	U.S. District Court, District of Colorado	No. 79-C-1677	Deposition Trial	January 1982 February 1982	Defendant
23. <u>Shoppin' Bag of Pueblo, Inc., et al. v. Dillon Companies, Inc.</u>	U.S. District Court, District of Colorado	No. 81-Z-1548	Deposition Deposition Trial	October 1982 November 1983 December 1983	Defendant
24. <u>The Walter Reade Organization, Inc. v. Columbia Pictures Industries, Inc., et al.</u>	U.S. District Court, Southern District of New York	No. 82 Civ. 8566(JES)	Trial	July 1983	Defendant
25. <u>Northrop Corporation v. McDonnell Douglas Corporation</u>	U.S. District Court, Central District of California	No. 79-4145-R	Deposition Deposition Deposition Deposition Deposition Deposition	December 1983 January 1984 February 1984 May 1984 February 1985 March 1985	Plaintiff
26. <u>Farley Transportation Co., Inc. v. The Santa Fe Trail Transportation Company, et al.</u>	U.S. District Court, Central District of California	No. CV 79-03937	Trial	January 1984	Defendant

**MICRONOMICS**

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213/629-2655

**ROY WEINSTEIN**  
*Prior Testimony*

Proceeding	Court/Commission/Agency	Docket or File	Deposition/ Trial	Date	On Behalf Of
27. <u>Eye Encounter v. Walter E. Heller Western, Incorporated</u>	Superior Court of the State of California, County of Los Angeles	No. C 286 803	Deposition	June 1984	Defendant
28. <u>Central Telecommunications, Inc. v. TCI Cablevision, Inc., et al.</u>	U.S. District Court, Western District of Missouri	No. 83-4068-CV-C-5	Deposition Trial	September 1984 January 1985	Defendant
29. <u>Alfred W. Hendricks, et al. v. Fuller-Western Motor Sales, Inc.</u>	Superior Court of the State of California, County of Los Angeles	No. CA 000,714	Deposition	January 1985	Defendant
30. <u>Casa Leasing, Inc. v. Universal Gym Equipment, Inc., et al.</u>	U.S. District Court, Central District of California	No. 82 4511 MRP (mcx)	Deposition Deposition	March 1985 July 1985	Plaintiff
31. <u>General Poly Corporation v. Allied Corporation</u>	U.S. District Court, District of Kansas	No. 82-2282	Deposition Trial	July 1985 May 1987	Plaintiff
32. <u>Smith International, Inc. v. Hughes Tool Company</u>	U.S. District Court, Central District of California	No. 72-1231 HLH	Deposition Trial	October 1985 January 1986	Plaintiff
33. <u>Washington Public Power Supply System v. Fischbach and Moore, Inc., et al.</u>	U.S. District Court, Western District of Washington	No. C831134	Deposition Deposition	October 1985 April 1986	Plaintiff

**MICRONOMICS**

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213/629-2655

**ROY WEINSTEIN**  
***Prior Testimony***

Proceeding	Court/Commission/Agency	Docket or File	Deposition/ Trial	Date	On Behalf Of
34. <u>Westronics Business Systems, Inc. v. Olivetti Corporation, et al.</u>	U.S. District Court, District of Arizona	No. CIV 83-937 PHX PGR	Deposition	October 1985	Defendant
35. <u>California Sound v. Sanyo Electric, Inc., et al.</u>	Superior Court of the State of California, County of San Diego	No. 469468	Deposition	December 1985	Respondents
36. <u>E. Martinoni &amp; Co. v. Julius Wile, et al.</u>	American Arbitration Assn., City of San Francisco		Hearing	March 1986	Respondents
37. <u>Cooper v. American Honda Motor Co., et al.</u>	Superior Court of the State of California, County of San Diego	No. 473513	Deposition	May 1986	Defendant
38. <u>Thurman Industries v. Pay 'N Pak Stores, Inc.</u>	U.S. District Court, Western District of Washington at Seattle	No. C84-1171R	Deposition Deposition	August 1986 September 1987	Plaintiff
39. <u>Powers v. Monarch</u>	U.S. District Court, Northern District of Illinois, Eastern Division	No. 82 C 2599	Deposition	September 1986	Defendant
40. <u>Cushman &amp; Wakefield of New Jersey, Inc. v. Connell Rice &amp; Sugar Co., Inc., et al.</u>	Superior Court of New Jersey, Law Division, Bergen County	No. L-046624-84	Deposition	February 1987	Defendant

**MICRONOMICS**

777 South Figueroa Street, Suite 4600  
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213/629-2655

**ROY WEINSTEIN**  
***Prior Testimony***

Proceeding	Court/Commission/Agency	Docket or File	Deposition/ Trial	Date	On Behalf Of
41. <u>Signal Printing, Inc. v. Didde Graphics Systems Corporation</u>	U.S. District Court, Central District of California	No. CV-85-2716-JGD	Trial	March 1987	Defendant
42. <u>Indiana Grocery Co., Inc. v. Super Valu Stores, Inc., et al.</u>	U.S. District Court, Southern District of Indiana, Indianapolis Division	No. IP85-176C	Deposition	August 1987	Defendant
43. <u>Bacchus Industries, Inc. v. Arvin Industries, Inc.</u>	U.S. District Court, District of New Mexico	No. CIV 86-1222M	Deposition	November 1987	Defendant
44. <u>General Communication, Inc. v. Alascom, Inc., et al.</u>	U.S. District Court, Western District of Washington at Seattle	No. C84-523C	Deposition Deposition	November 1987 December 1987	Plaintiff
45. <u>Cook Paint &amp; Varnish Co. v. Cargill, Inc.</u>	Circuit Court of Jackson County, Missouri at Kansas City	No. CV86-20089	Deposition	January 1988	Plaintiff
46. <u>Lee C. Ditzler and Paul H. Ditzler v. Texas Instruments, Inc., et al.</u>	U.S. District Court, Northern District of California	No. C 864579 SAW	Deposition	January 1988	Plaintiff
47. <u>Universal Frozen Foods Co. v. Lamb-Weston, Inc.</u>	U.S. District Court, District of Oregon	No. 86-1212-RE	Deposition	March 1988	Plaintiff

**MICRONOMICS**

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213/629-2655

**ROY WEINSTEIN**  
***Prior Testimony***

Proceeding	Court/Commission/Agency	Docket or File	Deposition/ Trial	Date	On Behalf Of
48. <u>Municipality of Anchorage, et al. v. Hitachi Cable, Ltd., etc., et al.</u>	U.S. District Court, District of Alaska	No. A81-347	Deposition	April 1988	Plaintiff
49. <u>Helix Ltd., et al. v. The Gillette Co.</u>	U.S. District Court, Central District of California	No. 82 2567 MML	Deposition	October 1988	Defendant
50. <u>The Vollrath Co. v. Sammi Corp., et al.</u>	U.S. District Court, Central District of California	No. CV 85-820 MRP (Kx)	Deposition Trial	February 1989 March 1989	Defendant
51. <u>Federal Trade Commission v. Red Foods, Inc., The Kroger Company</u>	U.S. District Court, Northern District of Georgia	No. 1:89-CV-611-ODE	Deposition	April 1989	Respondent
52. <u>Fontana Pipe and Fabrication, Inc. v. Ameron, Inc.</u>	U.S. District Court, District of Oregon	No. 88-954-PA	Deposition Deposition Trial	April 1989 September 1989 October 1989	Plaintiff
53. <u>In Re The Marriage of Sandra Nimoy and Leonard Nimoy</u>	Superior Court of the State of California, County of Los Angeles	No. D 201 535	Deposition	May 1989	Petitioner
54. <u>Tol-O-Matic v. Proma and Norgren, et al.</u>	U.S. District Court, District of Colorado	No. 87-F-1985	Deposition Trial	September 1989 October 1989	Defendant
55. <u>Empire Ownership Company, Ltd. v. Amir Development Co.</u>	Superior Court of the State of California, County of Los Angeles	No. C 650 527	Deposition	December 1989	Plaintiff

**MICRONOMICS**

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**ROY WEINSTEIN**  
***Prior Testimony***

Proceeding	Court/Commission/Agency	Docket or File	Deposition/ Trial	Date	On Behalf Of
56. <u>Harkins Amusement Enterprises, et al. v. General Cinema Corporation, et al.</u>	U.S. District Court, District of Arizona	No. CIV-77-736 PHX CLH	Deposition	December 1989	Defendant
57. <u>Betsey Grey v. Cineplex Odeon Corp., et al.</u>	Superior Court of the State of California, County of Los Angeles	No. C 632 927	Deposition	March 1990	Defendant
58. <u>Interinsurance Exchange of the Automobile Club of Southern California v. Samuel P. Delug, et al.</u>	U.S. District Court, Central District of California	No. CV-84-8651-MRP	Deposition	May 1990	Plaintiff
59. <u>Swensen's v. Butcher</u>	American Arbitration Assn., Phoenix AZ held at City of Palm Springs		Hearing	May 1990	Plaintiff
60. <u>Joslyn Manufacturing Co. v. Amerace Corporation</u>	U.S. District Court, Northern District of Illinois	No. 89 C 5775	Deposition Trial	August 1990 March 1991	Plaintiff
61. <u>The Spound Co. v. Informatics General Corp., et al.</u>	Superior Court of the State of California, County of Los Angeles	No. C 644220	Deposition	August 1990	Defendant



**MICRONOMICS**

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213/629-2655

**ROY WEINSTEIN**  
*Prior Testimony*

Proceeding	Court/Commission/Agency	Docket or File	Deposition/ Trial	Date	On Behalf Of
62. <u>Coordinated Pretrial Proceedings in Petroleum Products Antitrust Litigation</u>	U.S. District Court, Central District of California	MDL Docket No. 150 WPG, CV No. 75-2232-WPG	Deposition Deposition Deposition Trial	September 1990 July 1991 September 1991 February 1992	Plaintiff
63. <u>In the Matter re White</u>	Indio Superior Court of the State of California, County of Riverside	No. D-12039	Trial	November 1990	Respondent
64. <u>Zacky Foods and Zacky Farms v. Foster Farms, et al.</u>	Superior Court of the State of California, County of Los Angeles	No. C 658496	Deposition	December 1990	Plaintiff
65. <u>The City of Long Beach v. Pacific Refining Co.</u>	Superior Court of the State of California, County of Los Angeles	No. C 584 720	Deposition Trial	December 1990 January 1991	Plaintiff
66. <u>Alton Ochsner Medical Foundation v. Fischbach &amp; Moore, Inc., et al.</u>	U.S. District Court, Eastern District of Louisiana	No. 89-2353	Deposition Trial	February 1991 March 1991	Plaintiff
67. <u>Medical Designs, Inc. v. Smith &amp; Nephew DonJoy, Inc.</u>	U.S. District Court, Southern District of California	No. 88-1849-E (CM)	Deposition	October 1991	Defendant
68. <u>United States of America v. Builders Fence Company, Inc., et al.</u>	U.S. District Court, Northern District of California	No. CR91 0134 CAL.	Trial	October 1991	Defendant

**MICRONOMICS**

777 South Figueroa Street, Suite 4600  
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**ROY WEINSTEIN**  
*Prior Testimony*

Proceeding	Court/Commission/Agency	Docket or File	Deposition/ Trial	Date	On Behalf Of
69. <u>ORMCO v. Rocky Mountain Orthodontics</u>	U.S. District Court, District of Colorado	No. 90-F-2231	Deposition	October 1991	Defendant
70. <u>River City v. Fleming Foods, et al., Fong v. American Stores, et al.</u>	Superior Court of California, County of Sacramento	No. 356853; No. 357754	Deposition Trial Trial	March 1992 May 1992 March 1995	Plaintiff
71. <u>Banner Engineering v. Tri-Tronics Company, Inc.</u>	U.S. District Court, District of Minnesota, Fourth Division	No. 4-90 Civil 112	Trial	April 1992	Cross-
72. <u>Louisiana Power &amp; Light v. Fischbach &amp; Moore, et al.</u>	U.S. District Court, Eastern District of Louisiana	No. 86-0594, Section E	Deposition Trial	May 1992 September 1992	Complainant Plaintiff
73. <u>Apple Homes, Inc. v. Neil Landes, et al.</u>	Superior Court of California, County of Los Angeles	No. C 748248	Deposition	June 1992	Defendant
74. <u>C.R. Bard, Inc. v. Interventional Technologies, Inc.</u>	U.S. District Court, Southern District of California	No. 90-0847-E (CM)	Deposition Deposition Trial	August 1992 May 1993 September 1993	Defendant
75. <u>Texas Instruments, Inc. v. Dell Computer Corp.</u>	U.S. District Court, Northern District of Texas	No. CA-3-90-2086p	Deposition	September 1992	Cross-Complainant
76. <u>Great American Consortium, Inc. v. Meredith Corp.</u>	Superior Court of Arizona, County of Maricopa	No. CV91-02364	Deposition Trial	October 1992 November 1992	Defendant

**MICRONOMICS**

777 South Figueroa Street, Suite 4600  
Los Angeles, California 90017  
213/629-2655

**ROY WEINSTEIN**  
***Prior Testimony***

Proceeding	Court/Commission/Agency	Docket or File	Deposition/ Trial	Date	On Behalf Of
77. <u>Crown Homes, Inc., et al., v. Neil Landes, et al.</u>	Superior Court of California	No. BC009180	Trial	December 1992	Defendant
78. <u>State of California, et al. v. Chevron, et al.</u>	Superior Court for the State of California	No. C-587912	Deposition Trial	January 1993 February 1993	Plaintiff
79. <u>Rohm &amp; Haas Company v. Brotech Corp.</u>	U.S. District Court, District of Delaware	No. 90-109-JJF	Deposition Trial	March 1993 May 1993	Defendant
80. <u>North Shore Towers Associates v. Lupton Manufacturing Co.</u>	Supreme Court of the State of New York, County of New York	No. 06036/75	Trial	March 1993	Plaintiff
81. <u>Imperial Resource Recovery Associates, L.P. v. Zurn Industries, Inc., et al.</u>	Superior Court of the State of California, County of Imperial	No. 70138	Deposition Trial	March 1993 May 1993	Plaintiff/ Counter- Defendant
82. <u>Lincoln National Life Insurance Co., et al. v. North American Life and Casualty Co., et al.</u>	Superior Court of the State of California, City and County of San Francisco	No. 949451	Deposition Deposition Deposition Trial	May 1993 November 1996 December 1996 February 1997	Defendant
83. <u>El Cajon Cinemas, Inc. v. American Multi-Cinema, Inc.</u>	U.S. District Court, Southern District of California	No. 9000710B	Deposition Deposition	September 1993 October 1993	Defendant

**MICRONOMICS**

777 South Figueroa Street, Suite 4600  
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213/629-2655

**ROY WEINSTEIN**  
*Prior Testimony*

Proceeding	Court/Commission/Agency	Docket or File	Deposition/ Trial	Date	On Behalf Of
84. <u>In Re Marriage of Didi Anthony Yamagata and Hiromichi Yamagata</u>	Superior Court of the State of California	No. BD 034418	Trial	November 1993	Defendant
85. <u>Multistate Legal Studies, Inc. v. Harcourt Brace Jovanovich Legal and Professional Publications, Inc., et al.</u>	U.S. District Court, District of Colorado	No. 92-Z-2330	Deposition	December 1993	Defendant
86. <u>American Professional Testing Service, Inc. v. Harcourt Brace Jovanovich Legal and Professional Publications, Inc.</u>	U.S. District Court, Central District of California	No. CV92-3107-KLH (Bx)	Deposition Trial	March 1994 May 1994	Defendant
87. <u>Thompson Everett, Inc. v. National Cable Advertising, L.P., Cable Networks, Inc. and Cable Media Corporation</u>	U.S. District Court, Eastern District of Virginia	No. 3:93CV452	Deposition	March 1994	Plaintiff
88. <u>Investigation of the Commission's Own Motion Into the Regulation of Cellular Radiotelephone Utilities</u>	Public Utilities Commission, State of California	I.88-11-040	Hearing	May 1994	Intervenor

**MICRONOMICS**

777 South Figueroa Street, Suite 4600  
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 213/629-2655

**ROY WEINSTEIN**  
*Prior Testimony*

Proceeding	Court/Commission/Agency	Docket or File	Deposition/ Trial	Date	On Behalf Of
89. <u>United Farmers Agents Association, Inc., v. Farmers Insurance Exchange, et al.</u>	U.S. District Court, Western District of Texas, Austin Division	No. A92-CA-373 JN	Deposition	October 1994	Defendants
90. <u>Brenco, Incorporated, et al. v. Roller Bearing Industries, Inc.</u>	U.S. District Court, Eastern District of Virginia, Richmond Division	No. 3:94CV388	Deposition Trial	January 1995 January 1995	Defendant
91. <u>Gen-Probe, Inc. v. MicroProbe Corp.</u>	U.S. District Court, Southern District of California	No. 93-768 H (BTM)	Deposition	January 1995	Defendant
92. <u>Cel-Tech Communications, Inc., Comtech, Inc., Cellular Service, Inc., Nutek, Inc. v. Los Angeles Cellular Telephone Company. Affordable Portables, et al.</u>	Superior Court of California, County of Los Angeles, Southeast District	No. VC 015535	Deposition Trial	January 1995 February 1995	Plaintiffs
93. <u>Goldenwest Cellular Corp. v. Los Angeles Cellular Telephone Company, PacTel Cellular, et al.</u>	Superior Court of the State of California for the County of Orange	No. 715472	Deposition Deposition	February 1995 March 1995	Plaintiff

**MICRONOMICS**

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213/629-2655

**ROY WEINSTEIN**  
*Prior Testimony*

Proceeding	Court/Commission/Agency	Docket or File	Deposition/ Trial	Date	On Behalf Of
94. <u>Noise Reduction, Inc. v. NORDAM, Pratt &amp; Whitney Group, The Boeing Company, et al.</u>	U.S. District Court for the Northern District of Illinois, Eastern Division	No. 90 C 6497	Deposition	March 1995	Defendants
95. <u>BGB Pet Supply, Inc. v. Nutro Products, Inc.</u>	U.S. District Court, Eastern District of Michigan	No. 91-CV-77196-DT	Deposition Trial	July 1995 December 1995	Defendant
96. <u>So. Calif. Physicians Insurance Exchange v. William Kirksev &amp; Associates Agency, Inc., William Kirksev, et al.</u>	Superior Court of the State of California, County of Los Angeles	No. BC 088 821	Deposition Trial	July 1995 October 1995	Defendants
97. <u>In Re Brand Name Prescription Drugs Antitrust Litigation</u>	U.S. District Court, Northern District of Illinois	No. 94 C 897	Deposition Deposition Deposition	October 1995 May 2000 December 2000	Plaintiffs
98. <u>Michael A. Lobatz, M.D., et al. v. Airtouch Cellular Company and U.S. West Cellular of California, Inc.</u>	U.S. District Court, Southern District of California	No. 941311 IEG (AJB) Class Action	Deposition	December 1995 January 1996	Plaintiffs
99. <u>Cellular Activators, et al. v. L.A. Cellular, et al.</u>	Orange County Superior Court	No. 729278	Deposition	March 1996	Plaintiffs
100. <u>Steven G. Mihaylo v. Bank of America, Arizona</u>	Superior Court of the State of Arizona, County of Maricopa	No. CV 93-16018	Deposition	August 1996	Plaintiff

**MICRONOMICS**

777 South Figueroa Street, Suite 4600  
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213/629-2655

**ROY WEINSTEIN**  
*Prior Testimony*

Proceeding	Court/Commission/Agency	Docket or File	Deposition/ Trial	Date	On Behalf Of
101. <u>JJIS Division of Ethicon v. Cook Incorporated v. Julio C. Palmaz</u>	U.S. District Court, Southern Dist. of Indiana, Indianapolis	No. IP 95-1262-C (T/G)	Deposition	December 1996	Defendant
102. <u>Applied Medical Resources Corp. v. United States Surgical Corp.</u>	U.S. District Court, Eastern District of Virginia, Alexandria Division	No. 96-1217A	Deposition Trial	January 1997 April 1997	Plaintiff
103. <u>In Re: Circuit Breaker Litigation</u>	U.S. District Court, Central District of California	No. CV-88-3012-RS (TX)	Deposition	February 1997	Defendants
104. <u>Arthur Garabedian, dba. Western Mobile Telephone Company v. Los Angeles SMSA Limited Partnership, et al.</u>	State of California, Orange County Superior Court	No. 721144	Deposition	March 1997	Plaintiff
105. <u>Lou Ann Foley v. Farmers Insurance Group, et al.</u>	State of California, Los Angeles County Superior Court	No. LC 021228	Trial	April 1997	Defendants
106. <u>Mark Saunders and Ann Saunders, dba Cima-Tech Depositions, et al. v. California Reporting Alliance, et al.</u>	Superior Court of the State of California, County of Los Angeles	No. BC 072 147	Deposition Trial	August 1997 January 1998	Defendant

**MICRONOMICS**

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 213/629-2655

**ROY WEINSTEIN**  
*Prior Testimony*

Proceeding	Court/Commission/Agency	Docket or File	Deposition/ Trial	Date	On Behalf Of
107. <u>Compton Commercial Development Renaissance Plaza Company v. East Coast Foods, Inc.</u>	State of California, County of Los Angeles, Superior Court, Central District	No. BC 119593	Deposition Trial	September 1997 November 1997	Plaintiff
108. <u>Trend Offset Printing v. Gruner &amp; Jahn Printing &amp; Publishing Co., et al.</u>	Superior Court of the State of California, County of Riverside	No. 258927	Deposition Deposition	October 1997 December 1997	Defendant
109. <u>In the Matter of Pace Healthcare Management and Actuarial Sciences Associates, Inc.</u>	American Arbitration Assn., held in Los Angeles, CA		Deposition Hearing	November 1997 February 1998	Defendant
110. <u>Food Additives (HFCS) Cases</u>	Superior Court of California, Stanislaus County	No. 39693	Deposition	January 1998	Plaintiffs
111. <u>Charles A. Pancerzewski v. Microsoft Corporation</u>	U.S. District Court, Western District of Washington at Seattle	No. C97-293 D	Deposition	April 1998	Plaintiff
112. <u>SRAM Corporation v. Shimano, Inc., et al.</u>	U.S. District Court, Central District of California	No. SACV 96-208 GLT (EEEx)	Deposition Trial	August 1998 December 1999	Plaintiff
113. <u>Harris Corporation, et al. v. Mosel Vitelic Corporation</u>	U.S. District Court, Eastern District of Virginia, Alexandria Division	No. CA 98-209-A	Deposition	September 1998	Defendant



**MICRONOMICS**

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213/629-2655

**ROY WEINSTEIN**  
*Prior Testimony*

Proceeding	Court/Commission/Agency	Docket or File	Deposition/ Trial	Date	On Behalf Of
114. <u>NEC Corporation v. Hyundai Electronics Industries &amp; Hyundai Electronics America</u>	U.S. District Court, Eastern District of Virginia, Alexandria Division	Nos. CA-97-1967-A, CA-97-1968-A, CA-97-1969-A	Deposition	September 1998	Defendant
115. <u>Mallards Data Services, Inc., et al. v. Siemens Nixdorf Printing Systems, et al.</u>	Circuit Court for Pinellas County, Florida	No. 96-7077-CI-8	Deposition	October 1998	Plaintiffs
116. <u>Rancho Disposal Service, Inc., et al. v. Western Waste Industries, et al.</u>	Superior Court of California, County of San Bernardino	No. SCV 14473	Deposition Deposition Deposition	December 1998 January 1999 March 1999	Defendant
117. <u>adidas America, Inc. v. National Collegiate Athletic Association</u>	U.S. District Court, District of Kansas, Kansas City Division	No. 98-2510 GTV	Deposition Trial	January 1999 February 1999	Plaintiff
118. <u>Texas Instruments, Inc. v. Hyundai Electronics Industries Co., Ltd.</u>	U.S. District Court, Eastern District of Texas	Nos. 2:98 cv 0073, 74, 77	Deposition Trial Trial	January 1999 March 1999 April 1999	Defendant
119. <u>Ronald S. Haft v. Michael R. Klein, et al.</u>	Superior Court of the District of Columbia, Civil Division	No. CA 94-99-04	Deposition	April 1999	Defendant
120. <u>Surgin Surgical Instrumentation, Inc., v. Truck Insurance Exchange</u>	Superior Court of California, County of Orange	No. 662216	Deposition Trial	June 1999 August 1999	Defendant

**MICRONOMICS**

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213/629-2655

**ROY WEINSTEIN**  
*Prior Testimony*

Proceeding	Court/Commission/Agency	Docket or File	Deposition/ Trial	Date	On Behalf Of
121. <u>Harris Corp. v. Macronix International Co., Ltd. and Winbond Electronics Corp.</u>	U.S. District Court, Eastern District of Virginia, Alexandria Division	No. 98-1592-A	Deposition	July 1999	Defendant
122. <u>J. Gregory Brown &amp; Co., Inc. et al. v. National Life Insurance Co., et al.</u>	U.S. District Court, Central District of California	No. CV 98-3935 WJR	Deposition	July 1999	Defendant
123. <u>Her Majesty the Queen v. Balance Group International Trading, Inc.</u>	Ontario (Canada) Court, Provincial Division		Trial	August 1999	Defendant
124. <u>Michael Conway &amp; Raymond Nakano v. America West Holdings, et al.</u>	Superior Court of the State of Arizona, County of Maricopa	No. CV 97-17555	Deposition	September 1999	Plaintiffs
125. <u>In the Matter of Private Passenger and Commercial Automobile Insurance Benchmark Rates</u>	Texas State Office of Administrative Hearings, Commissioner of Insurance	No. 454-99-0408.G	Hearing	August 1999	Respondent
126. <u>Park Electrochemical Corp. v. Delco Electronics Corp., et al.</u>	U.S. District Court, District of Arizona	No. CIV 98-0777 EHC	Deposition Trial	September 1999 November 2000	Plaintiff

**MICRONOMICS**

777 South Figueroa Street, Suite 4600  
Los Angeles, California 90017  
213/629-2655

**ROY WEINSTEIN**  
*Prior Testimony*

Proceeding	Court/Commission/Agency	Docket or File	Deposition/ Trial	Date	On Behalf Of
127. <u>Coordination Proceeding</u> <u>Special Title (Rule 1550(b)).</u> <u>Sanitary Paper Cases I and</u> <u>II</u>	Superior Court of the State of California, County of San Francisco	Nos. 4019 & 4027; Master File No. 986984	Deposition	October 1999	Plaintiff
128. <u>Charles Knox v. Microsoft</u> <u>Corp.</u>	Superior Court, State of Washington, County of King	No. 95-2-11369-9 SEA	Deposition Deposition	November 1999 December 1999	Plaintiff
129. <u>Avery Dennison Corp. v.</u> <u>ACCO Brands, Inc., et al.</u>	U.S. District Court, Central District of California, Western Division	No. CV 99-01877 DT (Mcx)	Deposition	December 1999	Defendant
130. <u>Ace Foods, Inc. v. Jays</u> <u>Foods</u>	Circuit Court of Cook County, Illinois County Dept., Law Division	No. 97 L 09102	Deposition Trial	January 2000 June 2000	Plaintiff
131. <u>Sonus Pharmaceuticals, Inc.,</u> <u>et al. v. Molecular</u> <u>Biosystems, et al.</u>	U.S. District Court, Western District of Washington	No. C97-1273R	Deposition	January 2000	Defendant
132. <u>Steven Jiles v. Southern</u> <u>California Gas Co., et al.</u>	U.S. District Court, Central District of California	No. CV 99-00520 TJH (RNBx)	Deposition	June 2000	Defendant
133. <u>Applied Medical Resources</u> <u>Corp. v. Core Dynamics, Inc.</u>	U.S. District Court, Central District of California, Southern Division	No. SACV 99-748- DOC (Anx)	Deposition Trial	August 2000 January 2002	Plaintiff

**MICRONOMICS**

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**ROY WEINSTEIN**  
***Prior Testimony***

Proceeding	Court/Commission/Agency	Docket or File	Deposition/ Trial	Date	On Behalf Of
134. <u>PepsiCo, Inc. v. Central Investment Corp., et al.</u>	U.S. District Court, So. District of Ohio, Western Division	No. C-1-98-389	Deposition	November 2000	Plaintiff
135. <u>Ortho-McNeil Pharmaceutical, Inc. v. Barr Laboratories, Inc.</u>	U.S. District Court, District of New Jersey	No. 99-CV-00235 (GEB)	Deposition Deposition	November 2000 December 2000	Defendant
136. <u>Applied Medical Resources Corp. v. U.S. Surgical Corp.</u>	U.S. District Court, Central District of California, Santa Ana Division	No. SACV 99-625-AHS (EEx)	Deposition Trial	December 2000 July 2004	Plaintiff
137. <u>Oakland Raiders v. National Football League</u>	Superior Court of the State of California, County of Los Angeles	No. BC 206 388	Deposition Trial	January 2001 April 2001	Plaintiff
138. <u>Acres v. Mikohn Gaming et al.</u>	U.S. District Court for the District of Nevada	No. CV-S-97-1383	Deposition Trial	January 2001 March 2001	Defendant
139. <u>Cargill v. LGX, L.L.C.</u>	U.S. District Court, Eastern District of Pennsylvania	No. 00-CV-4252	Deposition	February 2001	Plaintiff
140. <u>Raymond Verdin, et al. v. Falcon.</u>	U.S. District Court for the Southern District of Texas Galveston Division	No. G-00-488	Deposition	April 2001	Plaintiff

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Proceeding	Court/Commission/Agency	Docket or File	Deposition/ Trial	Date	On Behalf Of
141. <u>Rose M. Bell et al. v. Farmers Insurance Exchange</u>	Superior Court of the State of California, County of Alameda	No. 774013-0	Deposition Trial	May 2001 July 2001	Defendant
142. <u>R. J. Reynolds Tobacco Co. v. Philip Morris, Inc.</u>	U.S. District Court for Middle District of N. Carolina	No. I-99CV-00185	Deposition	July 2001	Plaintiff
143. <u>Modesto City Schools et al. v. Riso Kagaku et al.</u>	U.S. District Court Eastern District of California	No. CIV.S-99-2214 DFL DAD	Deposition	August 2001	Plaintiff
144. <u>PepsiCo, Inc. v. Marion Pepsi-Cola Bottling, Co.</u>	U.S. District Court, Southern District of Illinois	No. 00-229-DRH	Deposition	September 2001	Plaintiff
145. <u>Inter-Tel, Inc. v. Bank of America</u>	Superior Court of the State of Arizona, County of Maricopa	No. CV 96-00867	Deposition Deposition Arbitration	December 2001 January 2002 January 2002	Plaintiff
146. <u>Citizens Telecommunications Company of the White Mountains, et al. v. Arizona Department of Revenue, et al.</u>	Superior Court of the State of Arizona, Arizona Tax Court	No. TX 98-00716 (Consolidated)	Deposition	January 2002	Defendant
147. <u>International Rectifier Corporation v. IXYS Corporation, and Does 1-10</u>	U.S. District Court, Central District of California	No. CV-00-06756- R	Deposition Trial Deposition Trial	January 2002 July 2002 July 2005 October 2005	Defendants

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Proceeding	Court/Commission/Agency	Docket or File	Deposition/ Trial	Date	On Behalf Of
148. <u>E.M.P.P., Inc. v. Bank One Corporation</u>	American Arbitration Assn., City of Columbus, Ohio	No. 25 148 00086 01	Arbitration	April 2002	Plaintiff
149. <u>Ortho-McNeil Pharmaceutical, Inc. v. Barr Laboratories, Inc.</u>	U.S. District Court, District of New Jersey	No. 00-CV-2805 (GEB)	Deposition	April 2002	Defendant
150. <u>Twentieth Century Fox Film Corporation v. Marvel Enterprises, Inc., et al.</u>	U.S. District Court, Southern District of New York	No. 01 CV 3016 (AGS)	Deposition	September 2002	Plaintiff
151. <u>James R. Strawn v. Sony Pictures Entertainment, Inc., et al.</u>	U.S. District Court, Southern District of Texas Houston Division	No. 01-CV-2853	Deposition	September 2002	Plaintiff
152. <u>Joel E. Zawikowski, et al. v. Beneficial National Bank, et al.</u>	U.S. District Court, Northern District of Illinois Eastern Division	No. 98 C 2178	Hearing	October 2002	Plaintiffs
153. <u>Tim Lahaye v. Namesake Entertainment, et al.</u>	U.S. District Court, Central District of California	No. CV 00-08306 TJH (RZx)	Deposition Trial	November 2002 October 2003	Defendants
154. <u>Petsmart, Inc. v. Datatec Systems, Inc.</u>	Superior Court of Arizona, Maricopa County	No. CV 2000-017581	Deposition Trial	January 2003 August 2003	Plaintiffs
155. <u>Roberta Todd, et al. v. Exxon Corporation, et al.</u>	United States District Court Southern District of New York	No. 97 Civ. 04557 (JES)	Deposition	February 2003	Plaintiffs

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Proceeding	Court/Commission/Agency	Docket or File	Deposition/ Trial	Date	On Behalf Of
156. <u>MercExchange v. Ebay, Inc.,</u> <u>Half com and Returnbuy, Inc.</u>	Eastern District of Virginia, Norfolk Division	No. 2:01-CV-736	Trial	May 2003	Plaintiffs
157. <u>Glaxo Group Ltd. and Glaxo</u> <u>Wellcome Inc. v. Ranbaxy</u> <u>Laboratories, Inc.</u>	United States District Court for the District of New Jersey	No. 00-5172 MLC	Deposition	June 2003	Defendants
158. <u>Pharmacia Corp. v. Par</u> <u>Pharmaceutical, Inc.</u>	United States District Court for the District of New Jersey	No. 01-CV-6011	Deposition	September 2003	Defendants
159. <u>GM Daewoo Auto &amp;</u> <u>Technology Company v.</u> <u>Daewoo Motor America</u>	United States Bankruptcy Court Central District of California Los Angeles Division	No. LA02-24411.BB	Deposition Hearing	September 2003 October 2003	Plaintiffs
160. <u>Aero Products Int'l, Inc. v.</u> <u>Intex Recreation Corp., Wal-</u> <u>Mart Stores and Quality</u> <u>Trading</u>	United States District Court Northern District of Illinois Eastern Division	No. 02 C 2590	Deposition Trial	October 2003 February 2004	Defendants
161. <u>Tristrata Technology, Inc. v.</u> <u>ICN Pharmaceuticals, Inc.</u>	United States District Court for the District of Delaware	No. 01-150-JJF	Trial	November 2003	Defendants
162. <u>Mary Beck, et al. v. The</u> <u>Boeing Company, et al.</u>	United States District Court Western District of Washington at Seattle	No. C00-0301P	Deposition	December 2003	Plaintiffs

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Proceeding	Court/Commission/Agency	Docket or File	Deposition/ Trial	Date	On Behalf Of
163. <u>John Doe I, et al. v. Unocal Corporation, Union Oil Company of California, John Imle, and Roger C. Beach.</u> <u>John Roe III, et al. v. Unocal Corporation and Union Oil Company of California.</u>	Superior Court of the State of California for the County of Los Angeles	No. BC237980 No. BC237679	Deposition	January 2004	Defendants
164. <u>Veritec, Inc. v. Mitsubishi Corporation</u>	International Court of Arbitration International Chamber of Commerce	No. 11944/TE/MW Arbitration		August 2004	Defendants and Counterclaimants
165. <u>Southern California Gas Co. v. Ingersoll-Rand Energy Systems</u>	American Arbitration Association	No. 72 198 00502 04 VSS	Deposition Trial	January 2005 February 2005	Plaintiff
166. <u>Hynix Semiconductor Inc., Hynix Semiconductor America Inc., Hynix Semiconductor U.K. Ltd., and Hynix Semiconductor Deutschland GmbH v. Rambus, Inc.</u>	United States District Court for the Northern District of California San Jose Division	No. CV 00-20905 RMW	Deposition Deposition Trial Deposition Trial	February 2005 December 2005 April 2006 September 2007 March 2008	Plaintiff



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Proceeding	Court/Commission/Agency	Docket or File	Deposition/ Trial	Date	On Behalf Of
167. <u>People of the State of California v. Econolite Control Products, Inc., a California Corporation, and DOES 1 through 100, inclusive.</u>	United States District Court Central District of California	No. BC 314141	Deposition Trial	June 2005 August 2005	Plaintiff
168. <u>Tag-It Pacific, Inc. v. Pro-Fit Holdings, Ltd.</u>	United States District Court Central District of California	No. CV04-2694 LGB	Deposition	September 2005	Plaintiff
169. <u>Ortho-McNeil Pharmaceutical, Inc. and Johnson &amp; Johnson Pharmaceutical Research &amp; Development, LLC v. Barr Laboratories, Inc.</u>	United States District Court for the District of New Jersey	No. 03-4678 (SRC)	Deposition	January 2006	Defendant
170. <u>In Re Dynamic Random Access Memory (DRAM) Antitrust Litigation</u>	United States District Court Northern District of California	No. M-02-1486 PJH	Deposition	October 2006	Defendant
171. <u>Affymetrix, Inc. v. Illumina, Inc.</u>	United States District Court for the District of Delaware	No. 04-901 JJF	Deposition	November 2006	Defendant
172. <u>In the Matter of: Certain Wireless Communication Equipment, Articles Therein, and Products Containing the Same.</u>	United States International Trade Commission Washington D.C.	No. 337-TA-577	Deposition	May 2007	Respondent

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Proceeding	Court/Commission/Agency	Docket or File	Deposition/ Trial	Date	On Behalf Of
173. <u>Visto Corporation v. Microsoft Corporation</u>	United States District Court for the Eastern District of Texas Marshall Division	No. 2:05-CV-546 (DJF)	Deposition	June 2007	Plaintiff
174. <u>State of Arizona v. Autozone, Inc.</u>	Superior Court of the State of Arizona in and for the County of Maricopa	No. CV2006-010186	Deposition Deposition	July 2007 August 2007	Plaintiff
175. <u>Camino Palmero West, LLC v. Cahuenga Ivar Associates, et al</u>	Superior Court of the State of California for the County of Los Angeles	No. BC 334 740	Deposition Trial	July 2007 September 2007	Plaintiff
176. <u>Boehringer Ingelheim International GmbH et al v. Barr Laboratories, Inc.</u>	United States District Court for the District of Delaware	No. 05-700-(KAJ)	Deposition Trial	September 2007 March 2008	Defendant
177. <u>Medtronic AVE, Inc., Medtronic, Inc., and Medtronic USA, Inc., v. Cordis Corporation</u>	United States District Court for the Eastern District of Texas Marshall Division	No. 2:03-CV-212 TJW	Deposition	November 2007	Plaintiff

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Proceeding	Court/Commission/Agency	Docket or File	Deposition/ Trial	Date	On Behalf Of
178. <u>Medtronic Vascular, Inc.,</u> <u>Medtronic, USA, Inc.,</u> <u>Medtronic, Inc., and</u> <u>Medtronic Vascular Galway,</u> <u>Ltd., v. Boston Scientific</u> <u>Corp., Scimed Life Systems,</u> <u>Inc., and Boston Scientific</u> <u>Scimed, Inc.</u>	United States District Court for the Eastern District of Texas Marshall Division	No. 2:06-CV-78	Deposition	March 2008	Plaintiff

# Exhibit 2

## SUMMARY OF MATERIALS CONSIDERED

Description	Bates Range
<b>PLEADINGS AND FILINGS</b>	
1. Complaint for Patent Infringement Seeking Damages and Injunctive Relief.	N/A
2. Plaintiffs' Notice of Motion and Motion for Preliminary Injunction.	N/A
<b>DECLARATIONS</b>	
1. Declaration of Glenn Magnuson in Support of Plaintiffs' Motion for Preliminary Injunction.	N/A
2. Declaration of William F. Gearhart in Support of Defendant's Opposition to Plaintiffs' Motion for Preliminary Injunction	
3. Declaration of Douglas Arthur, M.D. in Support of Defendant's Opposition to Plaintiffs' Motion for Preliminary Injunction	
4. Declaration of Philip Z. Israel, M.D. in Support of Defendant's Opposition to Plaintiffs' Motion for Preliminary Injunction	
<b>DEPOSITIONS</b>	
1. Deposition of Glenn Magnuson, March 18, 2008 (redacted).	N/A
<b>LEGAL FRAMEWORK</b>	
1. <i>Hybritech, Inc. v. Abbott Laboratories</i> , 4 U.S.P.Q. 2d 1001 (1987).	N/A
2. <i>Hybritech Inc. v. Abbott Laboratories</i> , 849 F. 2d 1446 (1988).	N/A
3. <i>Nutrition 21 v. U.S.</i> , 930 F.2d 871 18 U.S.P.Q.2d (BNA) 1347 (Fed.Cir. 1991).	N/A
4. <i>Eli Lilly and Company v. American Cyanamid Company</i> , 896 F. Supp. 851 (S.D. Ind. 1995).	N/A
5. <i>Collagenex Pharmaceuticals, Inc., et al. v. Ivax Corporation, et al.</i> , 375 F.Supp.2d 120 (E.D. N.Y. 2005).	N/A
6. <i>Giantceutical, Inc. v. Ken Mable Inc., et al.</i> , 356 F. Supp. 2d 374 (2005).	N/A
<b>PATENTS</b>	
1. U.S. Patent No. 6,413,204, Issued July 2, 2002.	SRX-HOL00000007-00000017
2. U.S. Patent No. 6,482,142, Issued November 19, 2002.	SRX-HOL00000018-00000027
<b>LICENSE AGREEMENTS</b>	
1. Cytoc-Xoft Settlement Agreement License and Mutual Release	HOLOGIC 0047845-63
<b>SENORX INTERNAL DOCUMENTS</b>	
1. SenoRx, Inc. 2007 Operating Plan.	SRX-HOL00002049-00002186
2. SenoRx Initial Public Offering Presentation, March 2007.	SRX-HOL00002187-00002223
3. SenoRx, Inc. Board of Directors' Meeting Presentation, June 14, 2007.	SRX-HOL00001504-00001664
4. SenoRx, Inc. Board of Directors' Meeting Presentation, September 26, 2007.	SRX-HOL00001665-00001774
5. SenoRx, Inc. Board of Directors' Meeting Presentation, December 20, 2007 and General Session Presentation of 2008 Operating Plan.	SRX-HOL00001775-00001954
6. Fourth Quarter/FY 2007 Conference Call Notes, February 19, 2008.	SRX-HOL00003380-00003397
7. SenoRx, Inc. Board of Directors' Meeting Presentation, February 27, 2008.	SRX-HOL00001955-00002048
8. Brachytherapy Sales Report	SRX-HOL00003362-00003379

## SUMMARY OF MATERIALS CONSIDERED

Description	Bates Range
<b>ANALYST REPORTS</b>	
1. Cowen and Company, SenoRx Inc, December 21, 2007.	SRX-HOL00002431-00002440
2. Canaccord Adams, SenoRx, January 17, 2008.	SRX-HOL00002441-00002450
3. Canaccord Adams, Hologic, February 1, 2008.	SRX-HOL00002451-00002458
4. Jeffries & Company, Inc., Hologic, February 1, 2008.	SRX-HOL00002459-00002465
5. Canaccord Adams, SenoRx, February 15, 2008.	SRX-HOL00002341-00002352
6. Pacific Growth Equities, SenoRx, Inc., February 15, 2008.	SRX-HOL00002402-00002411
7. Canaccord Adams, SenoRx, February 19, 2008.	SRX-HOL00002353-00002358
8. Citigroup Global Markets Equity Research, SenoRx Inc, February 19, 2008.	SRX-HOL00002371-00002388
9. Cowen and Company, SenoRx Inc, February 19 2008.	SRX-HOL00002389-00002392
10. Factset: Callstreet, Raw Transcript, SenoRx, Inc. Q4 2007 Earnings Call, February 19, 2008.	SRX-HOL00002326-00002340
11. Soleil Neponset Equity Research, SenoRx, February 19, 2008.	SRX-HOL00002424-00002430
12. Canaccord Adams, SenoRx, February 20, 2008.	SRX-HOL00002359-00002370
13. Cowen and Company, SenoRx Inc, February 20, 2008.	SRX-HOL00002393-00002401
14. Pacific Growth Equities, SenoRx, Inc., February 20, 2008.	SRX-HOL00002412-00002423
<b>SENORX WEBSITE</b>	
1. "SenoRx Granted New Patents for Partial Breast Radiation Balloon," Press Release, January 6, 2006.	SRX-HOL00002468
2. "SenoRx Announces 510(k) Clearance for its Multi-Lumen Radiation Balloon," Press Release, May 23, 2007.	SRX-HOL00002476-00002477
3. "SenoRx Announces Additional Patent Granted for Radiation Balloon," Press Release, June 18, 2007.	SRX-HOL00002478
4. "SenoRx Announces First Uses of its Multi-Lumen Radiation Balloon; Company Records First Commercial Sales of New Product," Press Release, June 28, 2007.	SRX-HOL00002479
5. "SenoRx Named as One of the Fastest Growing Companies in North America on Deloitte's 2007 Technology Fast 500," Press Release, October 30, 2007.	SRX-HOL00002480-00002481
6. "SenoRx Report Third Quarter 2007 Results," Press Release, November 13, 2007.	SRX-HOL00002482-00002486
7. "SenoRx Provides Initial Estimate for 2008 Revenue," Press Release, December 20, 2007.	SRX-HOL00002466-00002467
8. "SenoRx Launches Contura MLB," Press Release, January 17, 2008.	SRX-HOL00002469-00002470
9. Contura Multi-Lumen Balloon, SenoRx Treatment.	SRX-HOL00002520
10. "SenoRx Reports Revenue Growth of 43.2 Percent in Q4 2007 Compared with Q4 2006," Press Release, February 19, 2008.	SRX-HOL00002471-00002475

## SUMMARY OF MATERIALS CONSIDERED

Description	Bates Range
<b>SENORX SEC FILINGS</b>	
1. SenoRx, Inc. Form S-1/A (Amendment No. 3) Registration Statement, filed February 21, 2007.	SRX-HOL00002525-00002756
2. SenoRx, Inc. Form 10-Q for the period ended September 30, 2007.	SRX-HOL00002757-00002791
<b>HOLOGIC WEBSITE</b>	
1. "Hologic and Cytyc Complete Merger," Press Release, October 22, 2007.	SRX-HOL00002489
2. "Hologic Announces First Quarter Fiscal 2008 Operating Results," January 31, 2008.	SRX-HOL00002493-00002500
<b>HOLOGIC AND CYTYC SEC FILINGS</b>	
1. Cytyc Corporation Form 10-K/A (Amendment No. 2) for the fiscal year ended December 31, 2006.	SRX-HOL00002934-00003034
2. Cytyc Corporation Form 10-Q for the period ended June 30, 2007.	SRX-HOL00002864-00002933
3. Cytyc Corporation Form 8-K filed August 15, 2007, Exhibit 99.1, Press Release dated August 15, 2007, "Cytyc and Xoft Settle Intellectual Property Dispute."	SRX-HOL00002490-00002492
4. Hologic, Inc. Form 10-K for the fiscal year ended September 29, 2007.	SRX-HOL00003035-00003267
5. Hologic, Inc. Form 10-Q/A (Amendment No. 1) for the period ended December 29, 2007.	SRX-HOL00002792-00002863
<b>INDUSTRY RESEARCH</b>	
1. "Proxima Therapeutics Announces FDA Clearance of MammoSite RTS, a Tumor Site-Specific Radiation Therapy System for Breast Cancer," BW HealthWire, May 6, 2002.	SRX-HOL00002509-00002510
2. "North American Scientific Announces FDA Clearance of Low-Dose Breast Brachytherapy Product Company Plans to Launch in November 2006," North American Scientific Press Release, April 25, 2006.	SRX-HOL00002515-00002516
3. "Partial-Breast Irradiation Therapy with MammoSite Appears to Offer Similar Results as Whole-Breast Irradiation Therapy," American Society of Oncology Annual Meeting, June 2006, Abstract as presented on <a href="http://www.breastcancer.org">www.breastcancer.org</a> .	SRX-HOL00002517-00002519
4. "Momentum for Xoft's Electronic Brachytherapy Grows with Six Papers Accepted for Presentation at AAPM," Xoft Press Release, July 25, 2006.	SRX-HOL00002502-00002503
5. "North American Scientific Introduces ClearPath at ASTRO," North American Scientific Press Release, November 8, 2006.	SRX-HOL00002501
6. "North American Scientific Announces FDA Clearance of its ClearPath HDR Breast Brachytherapy System," North American Scientific Press Release, November 14, 2006.	SRX-HOL00002513-00002514
7. "Accelerated Partial Breast Irradiation as Sole Radiotherapy After Breast-Conserving Surgery for Early Stage Breast Cancer," Blue Cross and Blue Shield Association Technology Evaluation Center Assessment Program, Volume 22, No. 4, August 2007.	SRX-HOL00003270-00003303
8. Axxent Electronic Brachytherapy System, Axxent Balloon Applicator, Xoft, Inc. website, <a href="http://www.xoftinc.com">www.xoftinc.com</a> .	SRX-HOL00003268-00003269
9. "North American Scientific Will Divest NOMOS Business and Focus Exclusively on Brachytherapy," North American Scientific Press Release, August 3, 2007.	SRX-HOL00002512
10. "Cianna Medical Will Continue Innovation in SAVI Breast Brachytherapy Begun by BioLucent," Cianna Medical Press Release, September 20, 2007.	SRX-HOL00002487-00002488
11. "Breast Cancer: Statistics on Incidence, Survival, and Screening," Imaginis, The Women's Health Resource, <a href="http://www.imaginis.com">www.imaginis.com</a> .	SRX-HOL00003304-00003308
12. "North American Scientific Announces First ClearPath-HDR Clinical Experience," North American Scientific Press Release, September 28, 2007.	SRX-HOL00002508
13. "SAVI Produces Promising Results, Doctors Report at ASCO Meeting," Cianna Medical Press Release, October 9, 2007.	SRX-HOL00002523-00002524
14. "SAVI Breast Brachytherapy Reaches 100-Patient Milestone," Cianna Medical Press Release, October 22, 2007.	SRX-HOL00002521-00002522
15. "SAVI Applicator for Breast Brachytherapy May Optimize Treatment and Spare Healthy Tissue, Study Finds," Arizona Oncology Services Press Release, October 25, 2007.	SRX-HOL00003309-00003310
16. "North American Scientific Showcases CLEARPATH-HDR at Astro," North American Scientific Press Release, November 8, 2007.	SRX-HOL00002511
17. "New Technology to Treat Breast Cancer Shows Promise in Early Application," University of California, San Diego Medical Center, Moores Cancer Center News, November 19, 2007.	SRX-HOL00002506-00002507
18. "New Research at UCSD Shows SAVI Breast Brachytherapy Has Multiple Benefits," Cianna Medical Press Release, December 5, 2007.	SRX-HOL00002504-00002505

# Exhibit 3



**CONSOLIDATED STATEMENTS OF INCOME**  
**HOLOGIC, INC.**  
**FISCAL YEAR ENDED SEPTEMBER 29, 2007 AND QUARTER ENDED DECEMBER 29, 2007**

	Fiscal Year Ended September 29, 2007		Quarter Ended December 29, 2007	
	(Dollars in Thousands)	(Percent)	(Dollars in Thousands)	(Percent)
	(1)	(2)	(3)	(4)
1. Product sales	\$628,854	85.2 %	\$334,790	90.1 %
2. Service and other revenue	109,514	14.8	36,655	9.9
3. Total revenues	738,368	100.0	371,445	100.0
4. Cost of product sales	265,151	35.9	139,377	37.5
5. Cost of product sales - amortization of intangible assets	11,024	1.5	20,155	5.4
6. Cost of service and other revenue	116,626	15.8	44,078	11.9
7. Research and development	44,484	6.0	20,147	5.4
8. Selling and marketing	84,845	11.5	56,986	15.3
9. General and administrative	62,902	8.5	34,334	9.2
10. Amortization of acquired intangible assets	5,584	0.8	6,249	1.7
11. Impairment of acquired intangible assets	0	0.0	2,900	0.8
12. Acquired in-process research and development	0	0.0	370,000	99.6
13. Total operating expenses	590,616	80.0	694,226	186.9
14. Income from operations	147,752	20.0	(322,781)	-86.9
15. Interest income	2,815	0.4	2,253	0.6
16. Interest and other expense, net	(2,078)	-0.3	(31,660)	-8.5
17. Other (expense) income, net	0	0.0	(15)	0.0
18. Income before income taxes	148,489	20.1	(352,203)	-94.8
19. Provision for income taxes	53,911	7.3	6,405	1.7
20. Net income	\$94,578	12.8 %	(\$358,608)	-96.5 %

Notes: 1. Columns (2) and (4) are calculated as a percentage of total revenues (Line 3).  
2. Detail may not sum to total due to rounding.

Source: Column (1): Hologic Form 10-K for year ended September 29, 2007.

Column (3): Hologic Form 10-Q/A (Amendment No. 1) for quarter ended December 29, 2007.

**CONSOLIDATED STATEMENTS OF INCOME**  
**CYTYC CORPORATION**  
**FISCAL YEAR ENDED 2005, FISCAL YEAR ENDED 2006 AND QUARTER ENDED JUNE 30, 2007**

	Fiscal Year Ended December 31, 2005		Fiscal Year Ended December 31, 2006		Quarter Ended June 30, 2007	
	(Dollars in Thousands)	(Percent)	(Dollars in Thousands)	(Percent)	(Dollars in Thousands)	(Percent)
	(1)	(2)	(3)	(4)	(5)	(6)
1. Net sales	\$508,251	100.0 %	\$608,250	100.0 %	\$188,837	100.0 %
2. Cost of sales	107,149	21.1	134,184	22.1	48,283	25.6
3. Gross profit	401,102	78.9	474,066	77.9	140,554	74.4
4. Research and development	32,330	6.4	44,134	7.3	11,371	6.0
5. Selling and marketing	131,346	25.8	161,925	26.6	48,183	25.5
6. General and administrative	45,298	8.9	63,452	10.4	27,042	14.3
7. Restructuring	0	0.0	2,885	0.5	0	0.0
8. Arbitration decision	7,807	1.5	0	0.0	0	0.0
9. In-process research and development	0	0.0	0	0.0	0	0.0
10. Total operating expenses	216,781	42.7	272,396	44.8	86,596	45.9
11. Income from operations	184,321	36.3	201,670	33.2	53,958	28.6
12. Interest income	3,280	0.6	7,207	1.2	713	0.4
13. Interest expense	(7,168)	-1.4	(7,506)	-1.2	(3,765)	-2.0
14. Gain on equity investments, net	0	0.0	10,766	1.8	0	0.0
15. Other	(1,715)	-0.3	2,535	0.4	(11)	0.0
16. Total other income (expense), net	(5,603)	-1.1	13,002	2.1	(3,063)	-1.6
17. Income before provision for income taxes	178,718	35.2	214,672	35.3	50,895	27.0
18. Provision for income taxes	65,232	12.8	75,135	12.4	17,355	9.2
19. Net income	\$113,486	22.3 %	\$139,537	22.9 %	\$33,540	17.8 %

Notes: 1. Columns (2), (4) and (6) are calculated as a percentage of net sales (Line 1).  
2. Detail may not sum to total due to rounding.

Source: Columns (1) and (3): Cytoc Form 10-K/A (Amendment No. 2) for year ended December 31, 2006.  
Column (5): Cytoc Form 10-Q for quarter ended June 30, 2007.

# Exhibit 5

**STATEMENTS OF OPERATIONS**  
**SENORX, INC.**  
**FISCAL YEARS 2005 - 2007**

	Fiscal Year Ended December 31, 2005		Fiscal Year Ended December 31, 2006		Fiscal Year Ended December 31, 2007		Total	
	(Dollars in Thousands)	(Percent)	(Dollars in Thousands)	(Percent)	(Dollars in Thousands)	(Percent)	(Dollars in Thousands)	(Percent)
1. Net revenues	\$19,253	100.0 %	\$25,509	100.0 %	\$35,036	100.0 %	\$79,798	100.0 %
2. Cost of goods sold	10,105	52.5	13,506	52.9	15,124	43.2	38,736	48.5
3. Gross profit	9,148	47.5	12,002	47.1	19,912	56.8	41,062	51.5
4. Research and development	4,903	25.5	5,323	20.9	6,353	18.1	16,579	20.8
5. Selling and marketing	10,148	52.7	15,041	59.0	19,023	54.3	44,212	55.4
6. General and administrative	2,116	11.0	2,050	8.0	4,187	12.0	8,354	10.5
7. Total operating expenses	17,167	89.2	22,414	87.9	29,564	84.4	69,144	86.6
8. Loss from operations	(8,019)	-41.6	(10,411)	-40.8	(9,652)	-27.5	(28,082)	-35.2
9. Interest expense	665	3.5	998	3.9	1,647	4.7	3,310	4.1
10. Loss on debt extinguishment	0	0.0	197	0.8	1,265	3.6	1,462	1.8
11. Change in fair value of convertible promissory notes	0	0.0	3,960	15.5	(991)	-2.8	2,969	3.7
12. Other income - net	(72)	-0.4	(148)	-0.6	(1,639)	-4.7	(1,859)	-2.3
13. Loss before provision for income taxes	(8,613)	-44.7	(15,419)	-60.4	(9,933)	-28.4	(33,965)	-42.6
14. Provision for taxes on income	11	0.1	0	0.0	0	0.0	11	0.0
15. Net loss	(\$8,623)	-44.8 %	(\$15,419)	-60.4 %	(\$9,933)	-28.4 %	(\$33,975)	-42.6 %

Notes: 1. Columns (2), (4) and (6) are calculated as a percentage of net revenues (Line 1).  
2. Detail may not sum to total due to rounding.

Source: Columns (1) and (3): SenorX Form S-1/A filed February 21, 2007.  
Column (5): "SenorX Reports Revenue Growth of 43.2 Percent in Q4 2007  
Compared with Q4 2006," Press Release, February 19, 2008.

**BALANCE SHEETS**  
**SENORX, INC.**  
**FISCAL YEARS 2006 - 2007**

	2006		2007	
	(Dollars in Thousands)	(Percent)	(Dollars in Thousands)	(Percent)
	(1)	(2)	(3)	(4)
Current Assets:				
1. Cash and cash equivalents	\$7,413	37.1 %	17,185	40.9 %
2. Short-term investments	0	0.0	10,764	25.6
3. Accounts receivable, net	4,241	21.2	5,421	12.9
4. Inventory	4,989	25.0	6,651	15.8
5. Prepaid expenses and deposits	221	1.1	544	1.3
6. Total current assets	16,864	84.4	40,566	96.4
7. Property and equipment, net	1,101	5.5	1,071	2.5
8. Other assets, net	2,017	10.1	425	1.0
9. Total assets	19,981	100.0	42,062	100.0
Current Liabilities:				
10. Accounts payable	4,122	20.6	2,580	6.1
11. Accrued expenses	2,109	10.6	2,905	6.9
12. Deferred revenue - current	36	0.2	94	0.2
13. Current portion of long-term debt	3,210	16.1	2,093	5.0
14. Total current liabilities	9,477	47.4	7,672	18.2
15. Long-term debt - less current portion	10,596	53.0	27	0.1
16. Warrant liability	1,529	7.7	0	0.0
17. Total long-term liabilities	12,125	60.7	27	0.1
18. Convertible promissory notes (at fair value)	11,960	59.9	0	0.0
Shareholders' Equity (Deficit):				
19. Series A convertible preferred stock	3,000	15.0	0	0.0
20. Series B convertible preferred stock	8,808	44.1	0	0.0
21. Series C convertible preferred stock	35,009	175.2	0	0.0
22. Common stock	2	0.0	17	0.0
23. Additional paid-in capital	5,262	26.3	109,816	261.1
24. Deferred compensation	(127)	-0.6	0	0.0
25. Accumulated deficit	(65,536)	-328.0	(75,469)	-179.4
26. Total shareholders' equity (deficit)	(13,581)	-68.0	34,363	81.7
27. Total liabilities and shareholders' equity	19,981	100.0	42,062	100.0
<b>28. Net working capital</b>	<b>\$7,386</b>	<b>37.0 %</b>	<b>\$32,894</b>	<b>78.2 %</b>

Notes: 1. Columns (2) and (4) are calculated as a percentage of total assets (Line 8).

2. Detail may not sum to total due to rounding.

Source: Column (1): SenoRx Form S-1/A filed February 21, 2007.

Column (3): "SenoRx Reports Revenue Growth of 43.2 Percent in Q4 2007

Compared with Q4 2006," PrimeNewswire, February 19, 2008.

# Exhibit 6

**TOTAL U.S. SALES  
CONTURA MULTI-LUMEN BALLOON CATHETER  
2007**

<b>Period</b>		<b>Total U.S. Sales</b>
		<b>(Dollars)</b>
	<b>(1)</b>	<b>(2)</b>
1.	Q2 2007	\$25,500
2.	Q3 2007	187,000
3.	Q4 2007	329,500
<b>4.</b>	<b>Total</b>	<b>\$542,000</b>

Notes: 1. Sales for Q2 2007 have been estimated by subtracting Q3 2007 and Q4 2007 sales from total 2007 sales of \$542,000.

2. Detail may not sum to total due to rounding.

Source: SenoRx Fourth Quarter/FY 2007 Conference Call Notes, February 19, 2008.